United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

ORIGINAL

77-1003

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,
Appellee,

v.

SEYMOUR C. FELDMAN,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

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UNITED STATES COURT OF APPEALS
FILED
APR 4 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1977

(1330)

PAGINATION AS IN ORIGINAL COPY

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TESTIMONY.

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Adams, Jule D.:	
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DeRosa, Saverio:	
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WITNESSES FOR DEFENDANT:

Feldman, Evelyn:	
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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT.

- -X

UNITED STATES OF AMERICA,

Appellee,

v.

SEYMOUR C. FELDMAN,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

- -X

DOCKET ENTRIES.

DATE	PROCEEDINGS	EXCLUDABLE DELAY
1-15-76	Indictment ordered sealed.	Bonsal, J.
4-28-76	Indictment ordered unsealed.	MacMahon, J.
5-6-76	Deft. pleads not guilty. Atty. John S. Martin, Jr. Esq. Case assigned to Judge Conner. Deft. R.O.R. and ordered fingerprinted and photographed. 10 days for motions.	Wyatt, J.
5-11-76	Filed notice of appearance by Martin, Obermaier & Morvillo 1290 Ave of Americas NYC 10019	
7-1-76	Filed affdvt. & notice of motion for an order dismissing the indictment, to suppress all statements and for a bill of particulars...Ret. 7-22-76...	
7-1-76	Filed defts memorandum of law in support of above motions...	
7-7-76	Filed affdvt. of Richard J. Hoskins dtd. 8-26-76	
7-7-76	Filed affdvt. of H.C. Batchelder, AUSA in opposition to motions for bill of particulars, to dismiss etc.	
9-7-76	Filed Govts memorandum of law in opposition to defts Pre-trial motions.	
9-16-76	Filed Deft's Reply Memorandum of Law in support of Pre-Trial Motions.	

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76Cr.44 W.C.C.	PROCEEDINGS	EXCLUDABLE DELAY
10-7-76	Pre-trial conf. held...Only Atty's present..Tentative trial date fixed for Oct. 26, 1976....Conner, J.	3 10-7-76 E 1
10-8-76	Filed order that U.S.Atty. preserve and hold all documents papers and records produced on a confidential basis and shall not disclose them publicly, except as may be appropriate**** Conner, J.....	
10-12-76	Filed affdvt. of Rhea K. Neugarten, AUSA in suppport of order for production of certain documents regarding deft....	
10-15-76	Filed affdvt. of H.C. Batchelder, Jr. in support of Govts request for handwriting exemplars....	
10-18-76	Filed affdvt. of H.C. Batchelder, Jr. in support of a writ..Ret. 10-23-76---	
10-21-76	Filed Govts order to show cause for the taking of deposition of certain prospective witnesses...Ret. 10-22--76 Conner, J.	
10-21-76	Filed Govts memorandum in support of order to show cause for taking of depositions...	
10-26-76	Filed Govt's Affidavit and Notice of Motion for an order pursuant to FRCP 16 to preclude deft from introducing certain evidence. RET: 10-28-76.	
10-27-76	Filed Govts requests for voir dire....	
***** 10-26-76	Filed order that testimony of witnesses as indicated shall be taken by deposition on(No date)****Conner, J...	
10-28-76	Filed Govts memorandum in support of its use of charts..	
11-4-76	Filed Govts memo on cross examination with reference to testimony of defense counsel B.J. Santangelo	
11-4-76	Filed defts memorandum on right to cross examine Govt. witnesses	

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DOCKET ENTRIES

****	
10-28-76	Deft.& atty.John S.Martin,Jr.present...Jury trial begun & adj'd to Nov.1,1976
11-1-76	Trial cont'd.
11-2-76	Trial cont'd.
11-3-76	Trial cont'd.
11-4-76	Trial cont'd.
11-8-76	Trial cont'd.
11-9-76	Trial cont'd. Govts.motion to DISMISS CTS.16,19,24,44,49,57 and 58 GRANTED...
11-10-76	Trial cont'd. & concluded Jury verdict GUILTY CTS.1 thru 15 incl. Cts.17 and 18 Guilty 20 thru 23,25 thru 43,45 thru 48, 50 thru 56,59 and 60...P.S.I. ordered Sent.adjd to 12-22-76 at 9:45 a.m. Deft. Cont'd. R.O.R.....Conner,J...
11-15-76	Filed Writ of H/C with marshals return for T.Petty....

DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 76 CR 44
U S A	FELDMAN, SEYMOUR C.	PAGE 3

DATE	NR.	PROCEEDINGS CONNER,J
12-22-76		Filed Judgment (Atty., John S.Martin Jr.,present) The defendant is committed for imprisonmentfor a period of TWO (2) YEARS on Counts 1 through 18, inclusive; counts 20 through 23, inclusive; counts 25 through 43, inclusive; counts 45 through 48, inclusive; counts 50 through 56, inclusive; counts 59 and 60, to run concurrently with each other, pursuant to Title 18 U.S.C. § 3651 on condition that the defendant be confined to a jail type institution for a period of SIX (6) MONTHS. The execution of the sentence of imprisonment is suspended and the defendant is placed on probation for a period of EIGHTEEN (18) MONTHS, subject to the standing probation order of this Court. Defendant is released on his own recognizance, pending appeal. During the 18 months of probation, defendant shall make or cause to be made no claims for payment under Medicare and Medicaid, or any other medical assistance program. CONNER,J Entered on-12-22-76.
		Issued commitment and copies.
12-22-76		Filed affdvt.of R.K.Neugarten,AUSA regarding facts pertinent to sentence.....
12-28-76		Filed notice of appeal from Judgment entered 12-22-76...Mailed copy to defts atty. and ~~xxxx~~ copy given to U.S.Atty's office.....

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INDICTMENT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA :

- v - : INDICTMENT

SEYMOUR C. FELDMAN, : 76 Cr.

Defendant. :

- -x

COUNTS ONE THROUGH TEN

The Grand Jury charges:

1. At all times material to this Indictment SEYMOUR C. FELDMAN, the defendant, was a practicing medical doctor living at 620 Wolcott Avenue, Beacon, New York, in the Southern District of New York.

2. At all times material to this Indictment SEYMOUR C. FELDMAN, the defendant, was a commissioned officer in the United States Army Reserve.

3. From on or about June 1, 1969, up to and including the date of the filing of this Indictment, in the Southern District of New York, SEYMOUR C. FELDMAN, the defendant, unlawfully, wilfully and knowingly, did devise and intend to devise a scheme and artifice to defraud the Social Security Administration, an agency of the United States, and to obtain money by means of false and fraudulent pretenses, representations and promises.

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4. It was a part of said scheme and artifice that SEYMOUR C. FELDMAN, the defendant, would prepare and sign for submission to the Social Security Administration false, fictitious and fraudulent writings and documents, to wit, Requests for Medicare Payment, knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, his certification on each such Request that the medical services listed therein had been rendered by him or under his personal direction, whereas, as he then and there well knew, a substantial and material portion of the medical services listed therein had not been rendered by him or under his direction.

5. It was further a part of said scheme and artifice that SEYMOUR C. FELDMAN, the defendant, would prepare and sign for submission to the Social Security Administration Requests for Medicare Payment stating that medical services had been performed by the defendant on dates and at times when, in fact, the defendant was physically located hundreds of miles away from the patients.

6. It was further a part of said scheme and artifice that SEYMOUR C. FELDMAN, the defendant, would prepare and sign for submission to the Social Security Administration Requests for Medicare Payment stating that medical services had been performed by the defendant in the homes of numerous patients on a single day, whereas, in fact,

it would have been physically impossible for the defendant to have performed medical services in the homes of so many patients on a single day.

7. It was further a part of said scheme and artifice that SEYMOUR C. FELDMAN, the defendant, would prepare and sign for submission to the Social Security Administration Requests for Medicare Payment stating that medical services had been performed by the defendant in the homes of patients on days when, in fact, the patients were hospitalized and did not see the defendant at all.

8. It was further a part of said scheme and artifice that SEYMOUR C. FELDMAN, the defendant, would prepare and sign for submission to the Social Security Administration Requests for Medicare Payment bearing the purported signatures of patients, whereas, as he then and there well knew, the signatures were not those of the patients, nor were they made at the direction or with the authorization or permission of the patients.

9. It was further a part of said scheme and artifice that as a result of the submission of these Requests for Medicare Payment to the Social Security Administration, the Social Security Administration would cause the issuance of checks in payment for the medical services listed in the Requests, which checks would either be sent directly to SEYMOUR C. FELDMAN, the defendant, or to his patients, who would pay him from the proceeds of the checks.

INDICTMENT

10. On or about the dates set forth in Counts One through Ten below, in the Southern District of New York, SPENCER C. FELDMAN, the defendant, unlawfully, wilfully and knowingly, for the purpose of executing said scheme and artifice and attempting so to do, did place and cause to be placed in authorized depositories for mail matter and cause to be delivered by mail by the United States Postal Service according to the direction thereon, to United Medical Service, Inc., 2 Park Avenue, New York, New York 10016, certain Requests for Medicare Payment in connection with the patients set forth in Counts One through Ten below:

COUNT	DATE	PATIENT
1	January 10, 1974	Leo Berzaty - Still
2	July 31, 1971	Betty Friedman (not)
3	October 22, 1972	Paul Stamps
4	December 29, 1971	Leon Wilcox - moved
5	December 29, 1971	Leon Wilcox
6	June 30, 1972	Jule D. Adams
7	June 18, 1972	Jule D. Adams "
8	September 2, 1971	Jule D. Adams "
9	June 6, 1972	John Roberts
10	November 29, 1971	Marion Paschier still and no found

(Title 18, United States Code, Section 1341.)

INDICTMENT

COUNTS ELEVEN THROUGH SIXTY

The Grand Jury further charges:

On or about the dates set forth below, in the Southern District of New York, SEYMOUR C. FELDMAN, the defendant, a physician practicing medicine in the Southern District of New York, unlawfully, wilfully, and knowingly did make and present, and cause to be made and presented, for payment, to the Social Security Administration, an agency of the United States, claims upon and against the United States and the Social Security Administration, to wit, Requests for Medicare Payment in connection with the patients set forth in Counts Eleven through Sixty below, containing his certification that the medical services listed therein had been rendered by him or under his personal direction, and he then well knew such claims to be false, fictitious, and fraudulent in that a substantial and material portion of the medical services listed therein had not been rendered by him or under his direction:

COUNT	DATE	PATIENT
11	May 4, 1975	Maryette Salese
12	May 3, 1975	Joseph Salese
13	April 20, 1975	James Kriezis
14	April 20, 1975	Lillian Jacklyn
15	April 19, 1975	Fred Penney
16	August 15, 1974	Thomas J. Petty
17	April 28, 1974	Mae Keane

INDICTMENT

18	April 25, 1974	Edward Silvernail (dead) (check date)
19	February 28, 1974	Faye M. Simmons
20	January 1[illegible], 1974	Jennie Gordon no - had terminal cancer
21	January 10, 1974	Leo Berzety - still (mentally ill)
22	January 10, 1974	Robert C. Schmidt
23	January 10, 1974	Ethel Beaudoin - dead 1974-75
24	January 10, 1974	Victoria Simmons
25	August 20, 1972	Albert Martinet no
26	August 14, 1972	Fannie Eisner no (Florida)
27	August 13, 1972	Charles Horowitz (Military Suicide)
28	August 13, 1972	Mildred Horowitz
29	July 31, 1971	Betty Friedman no
30	July 31, 1971	Anna Vance no
31	July 29, 1971	Jennie Buckwald (mentally ill)
32	July 28, 1971	Mildred Horowitz still
33	July 27, 1971	Leon Wilcox cancer
34	October 22, 1972	Paul Stamps still - alcoholic)
35	December 29, 1971	Leon Wilcox (Hospital) alive
36	December 29, 1971	Leon Wilcox "
37	June 30, 1972	Jule D. Adams alive
38	June 18, 1972	Jule D. Adams
39	June 6, 1972	Jule D. Adams
40	April 11, 1972	Jule D. Adams

INDICTMENT

COUNT	DATE	PATIENT
41	March 13, 1972	Jule D. Adams
42	February 13, 1972	Jule D. Adams
43	January 19, 1972	Jule D. Adams
44	December 30, 1972	Jule D. Adams
45	December 25, 1971	Jule D. Adams
46	December 14, 1971	Jule D. Adams
47	October 24, 1971	Jule D. Adams
48	September 2, 1971	Jule D. Adams
49	June 6, 1972	John Roberts
50	May 16, 1972	John Roberts
51	January 21, 1972	John Roberts
52	August 16, 1971	John Roberts
53	July 20, 1971	John Roberts
54	June 28, 1971	John Roberts
55	April 25, 1971	John Roberts
56	September 29, 1972	Marion Paschier
57	November 29, 1971	Marion Paschier
58	December 24, 1972	Nannie Williamson
59	December 15, 1972	Joseph R. Perrotta
60	June 9, 1972	Margarita Ocasio

(Title 18, United States Code, Sections 287 and 2.)

FOREMAN

THOMAS J. CAHILL
United States Attorney

JUDGMENT OF CONVICTION.

SEYMOUR C. FELDMAN | DOCKET NO. 76 Cr. 44

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH 12 DAY 22 YEAR 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL John S. Martin, Jr., Esq. (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly, did devise and intend to devise a scheme and artifice to defraud the Social Security Administration, an agency of the United States, and to obtain money by means of false and fraudulent pretenses, representations and promises; unlawfully, wilfully, and knowingly did make and present, and cause to be made and presented, for payment, to the Social Security Administration, an agency of the United States, claims upon and against the United States and the Social Security Administration. (Title 18, U.S.Code, Sections 1341, 287 and 2.)

SENTENCE OR PROBATION ORDER

The defendant was asked whether he had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

TWO (2) YEARS on Counts 1 through 18, inclusive; counts 20 through 23, inclusive; counts 25 through 43, inclusive; counts 45 through 48, inclusive; counts 50 through 56, inclusive; counts 59 and 60, to run concurrently with each other, pursuant to Title 18 U.S.C. § 3651 on condition that the defendant be confined to a jail type institution for a period of SIX (6) MONTHS. The execution of the remainder of the sentence of imprisonment is suspended and the defendant is placed on probation for a period of EIGHTEEN (18) MONTHS, subject to the standing probation order of this Court.

SPECIAL CONDITIONS OF PROBATION

Defendant is released on his own recognizance, pending appeal.

During the 18 months of probation, defendant shall make or cause to be made no claims for payment under Medicare and Medicaid, or any other medical assistance program.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions set forth above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

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It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

U.S. DISTRICT COURT FILED DEC 22 1976 S.D. OF N.Y.

SIGNED BY

[X] U.S. District Judge

[ ] U.S. Magistrate

William C. Conner

WILLIAM C. CONNER

Date 12/22/76

MILITARY ANNUAL TRAINING

DATE OF TRAINING	EXHIBIT	PLACE
3/30/75 – 4/12/75	224	FORT DIX, NEW JERSEY
2 WEEKS		
8/25/73 – 9/8/73	224	FORT LEE, VIRGINIA
2 WEEKS		
7/14/72 – 7/29/72	224	FORT DRUM, NEW YORK
2 WEEKS		
7/3/71 – 7/17/71	224	FORT MONMOUTH, NEW JERSEY
2 WEEKS		

MEDICARE BILLED

EXHIBIT	TREATMENT DATE ON CLAIM	DAY	PLACE OF SERVICE BILLED	PATIENT NAME	DATE OF CLAIM
110	3/31/75	MONDAY	HOME	MARYETTE SALESE	5/ 4/75
111	3/31/75	MONDAY	HOME	JOSEPH SALESE	5/ 3/75
112	4/ 2/75	WEDNESDAY	HOME	JAMES KRIEZES	4/20/75
113	4/ 7/75	MONDAY	HOME	JAMES KRIEZES	4/20/75
114	4/ 1/75	TUESDAY	HOME	LILLIAN JACKLYN	4/20/75
115	3/31/75	MONDAY	HOME	FRED PENNEY	4/19/75
116	8/30/73	THURSDAY	HOME	MAE KEANE	4/28/74
117	8/30/73	THURSDAY	HOME	EDWARD SILVERNAIL	4/25/74
118	8/26/73	SUNDAY	HOME	JENNIE GORDON	1/13/74
119	8/30/73	THURSDAY	HOME	LEO BERZETY	1/10/74
120	8/27/73	MONDAY	HOME	ROBERT SCHMIDT	1/10/74
121	8/27/73	MONDAY	HOME	ETHEL BEAUDOIN	1/10/74
120	7/15/72	SATURDAY	HOME	ALBERT MARTINET	8/20/72
121	7/16/72	SUNDAY	HOME	FANNIE EISNER	8/14/72
121	7/23/72	SUNDAY	HOME	FANNIE EISNER	8/14/72
122	7/16/72	SUNDAY	OFFICE	CHARLES HOROWITZ	8/13/72
122	7/23/72	SUNDAY	OFFICE	CHARLES HOROWITZ	8/13/72
123	7/16/72	SUNDAY	OFFICE	MILDRED HOROWITZ	8/13/72
123	7/23/72	SUNDA	OFFICE	MILDRED HOROWITZ	8/13/72
90	7/ 3/71	SATURDAY	HOME	BETTY FRIEDMAN	7/31/71
90	7/ 4/71	SUNDAY	HOME	BETTY FRIEDMAN	7/31/71
90	7/10/71	SATURDAY	HOME	BETTY FRIEDMAN	7/31/71
90	7/11/71	SUNDAY	HOME	BETTY FRIEDMAN	7/31/71
90	7/17/71	SATURDAY	HOME	BETTY FRIEDMAN	7/31/71
90	7/18/71	SUNDAY	HOME	BETTY FRIEDMAN	7/31/71
122	7/ 5/71	MONDAY	HOME	ANNA VANCE	7/31/71
122	7/10/71	SATURDAY	HOME	ANNA VANCE	7/31/71
122	7/15/71	THURSDAY	HOME	ANNA VANCE	7/31/71
123	7/ 4/71	SUNDAY	HOME	JENNIE BUCKWALD	7/29/71
123	7/ 4/71	SUNDAY	OFFICE	MILDRED HOROWITZ	7/28/71
123	7/ 6/71	TUESDAY	OFFICE	MILDRED HOROWITZ	7/28/71
123	7/ 8/71	THURSDAY	OFFICE	MILDRED HOROWITZ	7/28/71
123	7/11/71	SUNDAY	OFFICE	MILDRED HOROWITZ	7/28/71
120	7/ 7/71	WEDNESDAY	HOME	LEON WILCOX	7/27/71
120	7/11/71	SUNDAY	HOME	LEON WILCOX	7/27/71

CHART OF MEDICARE BILLED.

mmp 10 Adams-direct

A Once a week.

Q Could you please tell us, this Court and jury, how long that continued?

A I would say about six months.

Q Six months?

A It might be longer than that. I just can't say for sure.

Q Did there ever come a time in 1971 and 1972 when he visited you 12 days in a row?

A No.

Q Did there ever come a time in 1971 that he visited you seven days in a row?

A No.

Q By the way, who is your present doctor?

A Dr. Schwartz, Morris Schwartz.

Q And he has been your doctor for how long, Mrs. Adams?

A Well, I would say for ten years.

Q Did he ever treat you for diabetes? Have you ever had diabetes?

A No.

Q Did there ever come a time in 1972 where Dr. Feldman treated you for 14 days in a row?

A No.

* * *

mmp 19 Adams-cross

Q But didn't this occur during the period that you had your injury and was out of work?

A I was never out of work, not when Dr. Feldman was taking care of me.

THE COURT: During the period Dr. Feldman was treating you, were you working regularly?

THE WITNESS: No, I am a part-time matron.

Q Did you ever fill out any Medicaire forms with Dr. Feldman or for Dr. Feldman?

A No.

Q Do you remember when you were interviewed by Miss Santangelo, about a month ago, telling her --

MR. BATCHELDER: Objection as to what she told Miss Santangelo. She is sitting here. She can testify. It is hearsay.

THE COURT: Don't repeat what you said to someone else.

MR. MARTIN: It is a prior inconsistent statement, and under the rules of evidence I have a right to confront the witness with it.

THE COURT: If it is a prior inconsistent statement, you may ask her about it.

MR. BATCHELDER: That would be if I intend to call Miss Santangelo.

mmp 20 Adams-cross

THE COURT: Well, this is not a prior inconsistent statement of Miss Santangelo, but of the witness.

MR. MARTIN: Exactly.

Q Didn't you tell Miss Antangelo at that time that you thought that you filled out some forms for Medicaid, although you could not remember what kind they were?

A That is exactly what I said, I still don't remember filling them out.

Q But you thought youmight have?

A Yes.

Q Did you also tell Miss Santangelo that sometimes your memory isn't too good?

A No. No, I dont remember telling her that. I think that is a little too personal.

Q You didn't say sometimes you forget things?

A Well, naturally I forget some things. Don't we all?

Q Absolutely.

A All right.

Q I am not supposed to answer questions.

A Well, be my guest.

Q You are not supposed to rule on evidence,

* * *

16a

mcp 1

UNITED STATES OF AMERICA
vs. 76 Cr. 44
SEYMOUR C. FELDMAN.

New York, November 1, 1976.

For the Government: Mr. Batchelder, Esq.
Ms. Neugarten, Esq.

For the Defendant: Mr. Martin, Esq.

Also Present: T. Barry Kingham, Esq.

- - -

MR. KINGHAM: If your Honor please, I have been asked to come to court this morning on behalf of the government in the Feldman case, which is presently before you on trial for two reasons. First of all, Mr. Fiske has asked if I would come down here to argue a motion which, I believe, was filed on Friday by government counsel with the idea that it be made plain to the Court that this is a matter about which the office feels very strongly and, also, that we would like the Court to understand that this is a matter not brought on by the government lightly or with any personal animus by counsel trying the case, but that this is a matter about which the United States Attorney and the United States Attorney's office feels very strongly.

mcp 2

As the Court knows, the motion pending is a motion to preclude Miss Betty Santangelo, who is an associate of the firm of which Mr. Martin is a member and who is trying the case on behalf of the defendant, from being called to the stand to testify as to any possible prior inconsistencies.

THE COURT: I don't think you need to argue that part of it, because it seems to me that is not arguable.

Mr. Martin, do you intend to call Miss Santangelo as a witness?

MR. MARTIN: I cannot tell you at this time. This is something that would have to abide the government's proof.

THE COURT: Under the canons of ethics I don't think you can call her as a witness. If he is going to be a witness on an important matter in the case, you are going to have to withdraw; you should have withdrawn in advance. The canons of ethics are very specific about that. This is to contradict the government's key witnesses on matters that are central to their testimony.

MR. MARTIN: Your Honor, the government's memorandum was delivered up to my office apparently

mcp 3

some time Friday night. I have a memorandum being prepared in response. Very simply, I must say the testimony of Miss Adams came as a real surprise to me. She was when interviewed by Miss Santangelo a very friendly person. She said that she was very grateful to Dr. Feldman for having saved her life, made several remarks of that nature. I never anticipated that it would be necessary to have to call Miss Santangelo to contradict her. The canons do indicate, and some cases hold, that a lawyer may in some instances testify at a trial. The Court has said, for example, that even an Assistant United States Attorney may testify at a trial. It suggests in that instance he have another Assistant United States Attorney handle the trial. I am not at all going to testify in this case. As I say, this is a matter that came on absolutely by surprise. I would say that on the basis of the testimony as it stands, I do not think that I will call Miss Santangelo.

THE COURT: I am not going to permit you to call her. I would have to give very serious consideration to that motion. I am telling you now I am not going to permit you to call her to contradict the central part of the testimony of these key government

mcp 4

witnesses. I think that is directly contrary to the canons of ethics. If you feel that it is necessary to call her, you can move for a mistrial, and we will start all over again with a new defense attorney. Because I can't permit it. With respect to the other part of the motion, that I think is the difficult part. I am not troubled with the first part, because the canons are so specific.

MR. MARTIN: May I be heard very briefly, because I don't think the canons are that specific. It seems to me that the canons talk about instances in which attorneys should withdraw and, indeed, if it appeared to me before this trial that we would be witnesses in the case, we would not have participated as counsel. However, the canons say that lawyers should withdraw when the lawyer becomes a witness.

And then it talks about after undertaking employment it becomes apparent that he or somebody in his firm will be called as a witness, he should not continue in the trial, except that he may undertake the employment and he or a lawyer in his firm may testify, one, if the testimony will relate solely to an uncontested matter; two, if the testimony will relate solely to a matter of formality and there is no reason

mcp 5

to believe that substantial evidence will be offered in opposition to the testimony; three, if the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client; and, four, as to any matter if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case.

Now, it seems to me, your Honor, I am prepared, obviously, to have Miss Santangelo testify or, if necessary, I will testify. The fact is that this came something as a surprise to us. We did not contemplate this. Miss Santangelo was sent out to interview these people so we would have the normal feel that a lawyer would like to have as to what the government witnesses are going to testify to. Miss Adams could not have been more friendly to Miss Santangelo and, indeed, in her expressions as to Dr. Peldman. Dr. Feldman was not present at the interview. I also would like the events as to Thursday reflected because those contained in the government's memorandum, I believe, are somewhat inaccurate. I did not refer to Miss Santangelo in

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my opening statement at all. I simply told your Honor when you were conducting the voir dire that at some point I might be assisted by Betty Santangelo and suggested that you mention that name. I have no distinct recollection one way or the other whether I used that term, "associate," to refer to her.

Miss Santangelo happened to be in court Thursday afternoon because she came down to bring me papers, or one of my associates brought them down in the morning, and I reviewed those, they were taken back to my office to be prepared in final form, matters as to another case, and Miss Santangelo brought those papers here. She arrived at approximately 4 o'clock, during the recess. I signed them and gave them back to her to serve, and I told her, "When you finish serving them, come back and we will go up to the office together."

At that time I thought that this television matter was what we were going to conclude with in the afternoon. She came back to the courtroom, and her recollection, more than mine, she does not recall being present at the bench conference, when your Honor asked me whether I wanted to conclude with Miss Adams that day.

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So even at that point I had no intention of having Miss Santangelo in court and, as I say, she returned shortly after, because she had served the papers on the United States Attorney's Office.

THE COURT: The canon is clear: an attorney in the case should not be a witness.

MR. MARTIN: Absolutely. I agree with that, but I did think that the law does indicate that in certain circumstances where it is unanticipated, they may be. As I say, at the moment I really don't think I will call Miss Santangelo.

THE COURT: I am telling you now what my ruling is, and that is, that if you feel that the testimony of Miss Santangelo is so vital to the defense, then I think you ought to move for a mistrial so that the testimony can be admitted, otherwise it won't be.

MR. MARTIN: That is a judgment I will have to make at the close of the government's case.

THE COURT: Whether I will grant it at the close of the government's case is a different matter. I think you are going to have to make that decision at a reasonable time. If you make it now, we will have lost one day of everyone's time. If you until the end of the government's case, that gives you a chance to play a little gameship. You can decide to

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move for a mistrial if you think the government has done inordinately well. I don't think that is fair play.

MR. MARTIN: Your Honor, it really does not have to do as much with Miss Adams as with other witnesses.

MR. KINGHAM: May I be heard, your Honor?

First, I want the record to be completely clear that the government in no way moves for a mistrial at this point, and should any mistrial be granted, it would have to be solely at the request of the defense.

THE COURT: I would not grant a mistrial on the government's request. We would have double jeopardy.

MR. KINGHAM: Secondly, I find it somewhat incredible that we are dealing with a situation where an associate in a lawfirm goes to interview government witnesses, presumably take some kind of a statement on notes as to what they say, a nd then it is completely unanticipated that the associate might have to testify later. Surely, this situation could have been avoided by having somebody else go who is not an associate of the law firm, and the ABA standards make that clear. If counsel wishes to forego the use of inconsistent statements, it is fine to send someone from the law firm. But if counsel foresees that he has to use the statements later, as surely it must be in any kind of a case like this, then he should

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send someone else.

And, in addition, the government would request there be no mention of Miss Santangelo as a person to whom a prior statement was made, nor an identification of anyone as being an associate of defense counsel's firm. I think it is important that Miss Santangelo, whose credibility is already in issue by the cross examination that took place Thursday, not sit in the courtroom, or not be referred to by counsel during the remainder of the trial.

THE COURT: I think that is a more difficult problem. It would not be difficult if Mr. Martin hadn't already referred to Miss Santangelo as an associate. If he had not done that, I would clearly permit him to use the name so that the witness would know whom he is talking about when he asks them if they made such and such statement to a young lady interviewer.

At this point I would be inclined to think that the only fair course would be to ask, "Did you say thus and so to a young lady who interviewed you about this case," without identifying her by name, since you have identified Miss Santangelo as an associate.

MR. MARTIN: I am nt even positive of that.

THE COURT: Do we have daily copy in this case?

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MR. MARTIN: No. The only place that would have come up, your Honor, was within the context of the voir dire, when I suggested that was a name that you should mention.

THE COURT: Well, I am not sure that in your cross examination you did not ask whether the witness was interviewed by your associate, Miss Santangelo.

MR. MARTIN: I am not sure, either. Also, may I suggest that I doubt if she were an investigator employed by me and I used the term associate, I am not sure the jury would view that to mean she was a lawyer that I was referring to.

MR. KINGHAM: Your Honor realizes that if it should become necessary at any point for Miss Santangelo to take the stand, I think that would become clear, and the entire course of events would become clear to the jury. Furthermore, if the jury had observed Miss Santangelo either handing papers to Mr. Martin or conferring with him on any occasion it would become clear that, in any event, she is associated with him in some capacity.

MR. MARTIN: No more than Mr. Howard, who sits here at government counsel table and will testify for the government, I understand.

THE COURT: Well, I think, maybe the way to

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handle this would be if you are going to refer to her, refer to her as your investigator. That is sufficiently ambiguous and it could mean a non-attorney.

MR. MARTIN: Yes. I may slip at times, but you can remind me. I will ask if they remember being interviewed by a young lady, without referring to her name.

THE COURT: If you can do it that way.

MR. MRATIN: The problem that comes up, these people have been interviewed by a number of people, including people from the United States Attorney's Office, people from HEW, and there have been other people who might fit the description of the young lady.

THE COURT: Did Miss Neugarten or any other woman from the United States Attorney's Office interview these people?

MR. KINGHAM: They have interviewed the same witnesses as well. There is a young lady investigator who is part of the government team here.

THE COURT: I think then we will have to permit him to refer to her by name, by using the description "investigator" instead of "associate" or "attorney."

MR. MARTIN: Fine.

THE COURT: Is that agreeable?

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MR. KINGHAM: Well, that obviously is the Court's resolution. We would prefer that the questions on cross examination concerning prior inconsistent statements be phrased more in the general.

THE COURT: If there had been only one female interviewer, I would permit that, but since there have been several, I think in this instance we have to permit Mr. Martin to identify his interviewer by name.

MR. MARTIN: Your Honor, I would still like to submit the memorandum that is being prepared.

THE COURT: I will consider it.

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MR. MARTIN: In view of your Honor's ruling, I think it is appropriate, and probably be necessary, for me to take some time right now to discuss this matter with my client, so that there never is any question that he fully understood what this proceeding was about, so that he will participate in whatever decision will be made.

THE COURT: Well, I might ask Mr. Kingham to comment on that. I have indicated what my disposition would be, that if the defendant moved at this point for a mistrial so that new counsel for the defendant could be chosen, that I would probably grant it.

Do you want to comment on that?

MR. KINGHAM: We have no problem with having the motion granted at this point. The problem, as we see it, as the Court posed before, as more government witnesses come on who have been interviewed by the same individual, the probability of the Court granting a mistrial would decrease as the trial continues and as more time is spent on the trial. So we would suggest if this motion were to be made, then, indeed, Mr. Martin should consult with his client and explain the circumstances, the consequences, and all the options

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available to Dr. Feldman, and perhaps Mr. Martin should be asked to make his choice either now or, certainly, by the noon recess in the case.

THE COURT: I am saying I would probably grant it now, but that probability is going to drop very, very sharply as we go along. I would say this, that if you want until the entire government's case is in and then ask for a mistrial, I will probably deny it, in fact, almost undoubtedly would deny it. If you wait even half-way through, I would probably deny it.

MR. MARTIN: Your Honor, as I said earlier, it seems to me in my mind that Miss Adams admitted enough on her cross-examination as to the statements that were made that that would not be necessary. I cannot predict as to future witnesses.

THE COURT: You are proceeding at your peril. I have told you as well as I could tell you what my attitude will be. And the canons are very clear. If you think one of your associates might be a witness in the case, you should withdraw.

MR. MARTIN: That being the case, your Honor, and that being your Honor's ruling, I think that it is of the utmost importance that I spend some time now

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with Dr. Feldman, so that all of this is very clear to him and that he can exercise the judgment that he wants to.

THE COURT: We have taken quite a bit of time already. Is five minutes enough?

MR. MARTIN: I will try to do it, Judge. I will let you know as soon as I am ready to proceed.

THE COURT: I will give you five minutes, and if you need more time, let me know.

(Recess.)

MR. MARTIN: Your Honor, I have spent the last five or ten minutes discussing this issue with Dr. Feldman. I told him as a result of your Honor's ruling we would not be able to ask the witnesses whether they have made certain statements to Miss Santangelo that would contradict their direct testimony. Your Honor has ruled that Miss Santangelo would not be permitted to testify if those witnesses were to deny such statements. I told him that would give him a right if he wanted to at this moment to move for a mistrial, to obtain other counsel. I told him if this were to occur, we would, of course,refund to him any part of our fee that did not represent work that would of use to new counsel. I told him that that might end up with a delay of the proceedings for

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approximately a month or so, but then that the trial would be held, and, of course, Miss Santangelowould be available to testify for him if the witnesses were to deny statements made to her, that he then could count on Miss Santangelo's testimony here.

He said, considering all that, he is still agreeable to proceed at this time.

THE COURT: Allright.

MR. MARTIN: I think, your Honor, it might be helpful to ask Dr. Feldman if what I have just said affirms the matters that I discussed with him and told him.

THE COURT: Do you affirm that, Dr. Feldman?

DEFENDANT FELDMAN: Yes, I do, your Honor.

MR. KINGHAM: Thank you, your Honor.

THE COURT: Bring the jury out.

(Mr. Kingham leaves the courtroom.)

(Jury in box.)

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

Official Court Reporter
U. S. District Court

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(Jury in box.)

THE COURT: Good morning. I apologize for the delay. We had some legal matters that had to be thrashed out. I know that it is not pleasant to sit back there in the jury room wondering what in the world is going on. It is like being on a train that is being stopped and nobody comes along to tell you why. But we did have some important matters to take care of first.

MR. BATCHELDER: The Government would call Joseph Perrotta as its witness. This is by videotape, and perhaps your Honor might like to tell the Jury what is about to transpire.

THE COURT: As has already been indicated to you, some of the witnesses who will testify on behalf of the Government in this case are quite elderly, and physically unable to come down to court to testify. Most of them are in the Beacon, New York, area, some distance from here, and their age and their infirmity is such that it would not have been medically wise to bring them down here to testify. So we have used a new tool of the court, videotape, which I am sure you all familiar with, insofar as it is used on your home TV sets. A crew was sent up with a videotape camera and recorder, and the testimony of the witness was taken. The procedure is very similar to the procedure here in court in

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that, first, the witness is sworn to tell the truth, and then the Government's attorney asks questions of the witness, the answers are recorded, and then the defendant's has the opportunity to ask questions on cross-examination, and those answers are recorded. I believe in each case the camera stays trained on the face of the witness. You don't see counsel, but you will hear their questions. And now, the testimony that is taken in this way has practically the same force and effect as the testimony from a live witness on the stand here in court. The purpose of the videotape, as distinguished from taking a deposition before a notary public is, of course, that you will have the opportunity to see the witness as he or she is testifying, be able to observe his demeanor and to consider what effect, if any, that should have on the credibility of the witness.

All right.

(The videotape deposition of Joseph R. Perrotta as a witness in behalf of the Government was played before the Jury. During the playing of the deposition the following took place:

THE COURT: Turn up the volume. Some of the Jurors have expressed an inability to hear.)

MR. BATCHELDER: Your Honor, the Government has another witness on videotape, Marion Paschier.

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MR. MARTIN: Before we do that, there are some questions and answers in the Grand Jury testimony of Mr. Perrotta that I would like to read.

MR. BATCHELDER: We will offer the full and complete Grand Jury testimony of Mr. Perrotta, and if the Court wishes to hear the Government's position at the recess, we will discuss it and you can read that Grand Jury report.

THE COURT: All right.

We are now going to have the videotape of another witness, a Miss Paschier.

(The videotape deposition of Marion Paschier was played to the Jury on behalf of the Government.)

THE COURT: We will take our morning break now. Ten minutes.

(Recess.)

E L I Z A B E T H E . S C O T T, a witness called on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BATCHELDER:

Q Mrs. Scott, could you please tell me your address, please?

A Well, we live on Old Dovers Inn Road, Dover Plains, New York.

* * *

mmt22

next witness Saverio De Rosa.

S A V E R I O D e R O S A, called as a witness by the government, being first duly sworn, testified as follows:

MR. MARTIN: I object to this testimony. You may recall this was the subject of a pretrial matter.

THE COURT: Approach the bench, please.

(At the bench.)

MR. MARTIN: This matter was objcted to pretrial, ruled on. I just want to be sure the record is clear and that I continue to object.

THE COURT: I don't remember now what the point was.

MR. MARTIN: Judge Palmieri ruled on it during the time when the matter was referred to him. It had to do with the question of adequate advice as to constitutional rights.

(In open court.)

DIRECT EXAMINATION

BY MR. BATCHELDER:

Q Can we have your occupation, please?

A I am the contract officer for the Bureau of Health Insurance.

Q How long have you had those duties, please?

mmt23 De Rosa- direct

A My current duties started approximately two and a half years ago.

Q Calling your attention to July 1973 what were your duties then?

A At that time I was senior program integrity investigator. That was supervisory investigator.

Q Calling your attention to July 10, 1973, did you have occasion, along with others, to meet Dr. Seymour Feldman?

A Yes, sir.

Q First, can you tell us where you met him?

A It was in the federal building, 26 Federal Plaza.

Q That is right across the street?

A Yes.

Q Can you remember, was that a weekend?

A It was a week day.

Q Can you tell us how Dr. Feldman was dressed?

A He was dressed in a wrinkled Army uniform at the time.

Q Was that a lieutenant colonel's uniform with silver oak leaves on the shoulder?

A Yes.

Q Had you called him up and asked him to come down there?

mmt24 De Rosa-direct

A We sent him a letter.

Q You asked him to come down in military uniform?

A No, sir.

MR. MARTIN: Objection, your Honor.

THE COURT: Sustained.

Q Now, could you please tell this Court and jury what you said to Dr.Feldman and what he said to you initially, if you can, please.

A At the interview the first thing we did was advise Dr.Feldman of his constitutional rights.

Q Tell this Court and jury what you mean by that.

A We advised him of his right to remain silent, of his right to counsel; we advised him of the fact that we were asking questions pertaining to a criminal investigation. I advised him of his right to stop the questioning at any time that he saw fit and to retain counsel.

Q Now, directing your attention to his employment in Harlem Valley State, did you ask him any questions about that and what, if anything, did he say?

A Yes, we asked him a series of questions concerning his employment. Can I refer to a report that was made of that day?

Q Yes, if you will just read it briefly to yourself to see if that refreshes your recollection.

mmt25 DeRosa-direct

A Yes. We asked him about his background and practice. We asked him what position he held, what his hours of employment were, and what are the duties he held at he hospital.

Q Do you remember what he told you about his hours?

A Yes. At that time Dr. Feldman told us that his hours at the hospital were between 8:30 and 4:30, Monday through Friday, and that in addition to that he was the chair person of the facilities utilization review committee.

Q Did he tell you approximately how many patients he had a day?

A Yes. He told us that he treated approximately seventy to eighty patients per month, and he told us that 50 per cent of these patients were Medicare patients.

Q Did he indicate to you anything with respect to the home visits that he had with people?

A Yes. Dr. Feldman told us that he made approximately eight to twenty home visits per day seven days per week.

Q Did he say what treatment he was giving at that time?

A Yes. He said that the visits consisted of inspection and examination.

Q Did he tell you about how long these visits lasted at the home?

mmt26 DeRosa-direct

A Yes.

Q Please tell this Court and jury how long.

A He said that the visits lasted from approximately fifteen minutes to one hour each.

Q Was this at the same time that he was employed at Harlem Valley State?

A Yes.

Q Did he also indicate that he had not taken a vacation for five years?

A Yes, sir.

Q Calling your attention to the treatment, did you specifically question him about electrocardiogram treatment, if you can recollect?

A If you will give me a moment. Yes. Some of the patients that had been visited he had told us were "fragile cardiacs," and that is in quotation because that is the term he used. He also stated when we questioned him that he had never billed for an EKG, and when we asked him how did he know they were cardiacs, he said he at some times sent patients to the hospital to have that done, and that the initial evaluation was done on palpation and examination.

Q Did he indicate with regard to who signed the Medicare forms that he might have billed patients for?

A Yes. One form of our questioning was to ask him

mmt27 DeRosa-direct

about the claim form itself, and he told us that he carried blank claim forms with him on his visits and that he would ask the patient to sign the form either during or after the visit. We asked him if that were the case, how come patients denied signing any forms.

MR. MARTIN: Objection as to what they were told by others.

THE COURT: Sustained. The jury will disregard that.

Q Directing your attention to the question, what did he tell you, just what did Dr. Feldman tell you about that practice?

A He told me that during the visit with the patient or right after the visit he would have them sign a blank Medicare claim form.

Q Did you question Dr. Feldman as to record backup that he might have as to patient visits?

A Yes. We asked him how he accomplished his billing, and he proceeded to tell us that he carried what he called a tally sheet with him on which he would note the visits that he made during that week, and that every two weeks he would summarize from his own records into a ledger book or permanent file that he maintained at his office.

Q Did he indicate that that was the basis for

mmt28 DeRosa-direct

his billing?

A Yes, sir.

Q Did you ever ask him whether he had ever signed any of the 1490s with the patient's name?

A No, sir, we didn't ask him that question.

Q And did you ever indicate during the course of your conversation that he might have signed those forms?

A We indicated to him that in response to his explanation of the 1490s that the patients did not --

MR. MARTIM: Objection.

Q Just whether you indicated to him anything about them.

A Yes.

Q What did he say to you?

A When we asked him, when we told him that the patients --

Q You can't say what the patients told you.

A Okay. He could not explain why there was a question about the signatures.

Q Did there come a time that you asked him for handwriting exemplars?

A Yes, sir.

Q Did you ask him for an exemplar of his own name?

A Yes, sir.

mmt29 DeRosa-direct

Q What did he say to you and what did you say to him?

A At that time to the best of my recollection he gave us handwriting exemplars.

Q Did you ask him for handwriting exemplars with respect to the 1490s?

MR. MARTIN: Objection, your Honor.

May we approach the bench?

(At the bench.)

MR. MARTIN: I am not quite sure what is coming, but we should have an offer of proof as to constitutional privilege.

MR. BATCHELDER: He chose not to invoke it.

THE COURT: He may have waived it in some respects.

MR. MARTIN: He does have a right to counsel.

THE COURT: What is the evidence going to show?

MR. BATCHELDER: That he refused to sign the names of beneficiaries.

THE COURT: On what stated ground?

MR. BATCHELDER: He just refused.

MR. MARTIN: He was told at the outset that he had a right to counsel.

THE COURT: If you go before the grand jury and you are told you have a constitutional right and you simply refuse to answer questions without invoking the right --

mmt30 DeRosa-direct

MR. MARTIN: He was told that he also could stop the questioning at any time.

THE COURT: Stop the questioning, yes.

MR. MARTIN: You have a right not to answer any questions.

THE COURT: He was not stopping the questions.

MR. MARTIN: He did selectively invoke his privilege.

THE COURT: If I were sure he was exercising his rights, I would go along with you. But he didn't invoke any privilege.

MR. MARTIN: He was told that he simply had the right.

THE COURT: And then he proceeded to answer questions for an extended period.

MR. MARTIN: He had the right to stop.

THE COURT: To stop the questioning, not to refuse to givehandwriting samples without the presence of counsel.

MR. MARTIN: He was told he had the right to do these things; it was a constitutional right he had.

THE COURT: You have told me that before.

(In open court.)

BY MR. BATCHELDER:

Q What did he say?

A He refused to sign.

mmt31 DeRosa-direct -cross

Q Now, calling your attention to that interview, did Dr. Feldman say how long these visits were with these patients at home?

A Yes.

Q Could you please tell this Court and jury what he said.

A He said that the visits usually took from fifteen minutes to one hour.

THE COURT: We have covered that.

MR. BATCHELDER: I just wanted to make sure.

Q Prior to coming here and testifying, have you reviewed your reports with me?

A This report?

Q Yes.

A Yes, sir.

MR. BATCHELDER: I have no further questions of this witness.

CROSS-EXAMINATION

BY MR. MARTIN:

Q Did Dr. Feldman in the course of this conversation with you tell you about how he obtained medication for his patients?

A Can I just refresh my memory?

Q Yes. Look at the bottom of the first page, last

paragraph.

A Yes.

Q What did he say?

A According to my notes, he said that if the patient required medication he paid for that out of his own pocket and gave it to the patient.

Q You testified at the outset, did you not, sir, that you told Dr.Feldman if he didn't want to answer any of the questions he had a right not to do so?

A Yes.

Q And when you asked him for the handwriting exemplars, he said he would not do that?

A Yes.

Q You told him he had a right not to answer any of your questions?

A Yes, sir.

Q During the course of this conversation did Dr. Feldman complain at all to you that as to some of the visits he had made the claim for payment had been disallowed improperly?

A To the best of my recollection he may have mentioned certain complaints he had about the way the claims were processed, but I can't recall specifically.

Q He was complaining that his claims were not

mmt33 DeRosa-cross

properly processed? Is that correct?

A That he was not being paid what he thought he should have been paid.

Q And this interview to which you refer took place in July of 1973? Is that correct?

A Yes, sir.

Q That is over three years ago?

A Just about, yes, sir.

MR. MARTIN: Nothing further.

MR. BATCHELDER: The government would read a stipulation to the jury entered into by Mr. Martin and his law firm and the United States Government.

THE COURT: Is it lengthy?

MR. BATCHELDER: It is two pages.

THE COURT: Does it relate to this witness?

MR. BATCHELDER: No, sir.

THE COURT: That is all. Thank you, sir.

(Witness excused.)

(At the sidebar.)

THE COURT: Shall we adjourn now?

How much more of this case do we have?

MR. MARTIN: You have apparently seen eighty per cent of the government's case. It is my opinion that the defendant might be better without putting a case in. I

mmt34

don't mean to suggest that I am thinking so. I will be very happy to have the defendant testify if he wants to. But I do think there is some dispute between us as to the course of action.

THE COURT: So you can't say definitely? If he does go on the stand, can you give us a rough idea as to how long you think it might take?

MR. MARTIN: His direct will not be too long?

MR. BATCHELDER: If the government does rest at this point, it would do so without calling several witnesses who are alive and whose claims are referred to in the indictment. And we will have some serious motions to make with respect to those. It may be necessary for me, if your Honor would deny the motions that I make, to call some of those people.

THE COURT: I may have to dismiss those counts as to which no evidence was introduced. Are you going to call those witnesses?

MR. BATCHELDER: If he wants to call them. He had his investigator associate out there. He knows the witnesses that we have.

MS. NEUGARTEN: We have told him the witnesses who we will have and there are no more patient witnesses.

MR. MARTIN: Is there any report from the handwriting

mmt35

expert?

MR. BATCHELDER: I don't have a report for him. I expect to put him on tomorrow.

THE COURT: When will you get it?

MR. BATCHELDER: I don't know that he is going to give me a written report.

MR. MARTIN: That may delay things just a bit.

THE COURT: I can't force him to give you a report he doesn't have.

MR. MARTIN; I think, Judge, there is a possibility that we will have some witnesses tomorrow. I will work on the assumption that the government is not going to try to line up people who will come down tomorrow. That is the best I can do.

THE COURT: Well, you know who the patient witnesses are; you have seen them all. You have until 11 o'clock tomorrow to get your witnesses.

(In open court.)

THE COURT: We are going to recess now for the evening. Tomorrow is Election Day, and I wish that our schedule were such that we could all take the day off. We cannot. But we will make sure that you have an opportunity to get to the polls We will start at our regular time at 10 o'clock and we will leave early enough so that you

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will be able to get anywhere in the Southern District before the polls close.

Have a good evening, and don't discuss the case in the meantime with anyone.

(Whereupon, an adjournment was taken to November 2, 1976, at 10 o'clock a.m.)

* * *

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THE COURT: It is now 2:35 p.m. I would suggest I give you until 3 o'clock to decide what you want to do, if anything, by way of putting on your case. We will take our afternoon break and come back at 3 o'clock.

MR. MARTIN: Perhaps I should make my motions.

THE COURT: Well,suppose you make your motions first and then I will give you 20 or 25 minutes.

MR. MARTIN: Could you give me the use of the witness room? Witnesses are finished.

THE COURT: You can use the robing room and I will go upstairs in case the witness room is occupied. If it is not occupied, of course.

Are there any witnesses here?

MR. BATCHELDER: Yes, we have rebuttal witnesses.

(In open court.)

THE COURT: We are going to break until about 3 o'clock. We have some legal matters to take care of. So we will take our afternoon break a little earlier.

(Jury excused.)

THE COURT: All right, Mr. Martin.

MR. MARTIN: Let me start, your Honor, with the first point that I would like to make. I would like to move at this time to dismiss all of the mail fraud counts in the

indictment, and I would cite the authority on that Judge Weinfeld's opinion in Unitsd States v. Henderson, which appears at 386 Fed. Supp., 1048.

Judge Weinfeld in the Henderson opinion, which was a tax case and which also had mail fraud counts, said that the purpose of the mail fraud statute was to protect the public basically, the gullible public, from fraud, that it was not the purpose to protect the government, that there were specific statutes designed to protect the governmental interests. It seems to me under the reasoning of Judge Weinfeld that the mail fraud counts should not stand here, because the only victim, as shown by the government's proof here, is the government itself, and as to that they have the protection of the false-claim act, and, therefore, the mail fraud counts should be dismissed.

MR. BATCHELDER: Your Honor, may I briefly be heard on that?

THE COURT: Yes.

MR. BATCHELDER: With respect to the mail fraud count, your Honor, leaving aside the fact that it is a tax case and not a case in which the mailing of claims is an integral part of the scheme, it may be fine for Mr. Martin to draw that distinction as to who is defrauded and who is not defrauded, but the end result in this is really that the

mmt118

patients are the ones who are defrauded if they are supposedly rendered services by a doctor and the doctor does not render those services and he sends bills to the government for those services. Here the patient was billed for services that were never rendered, and the patient truly is the person who suffers, even though the payment comes from another source.

THE COURT: Let us be more specific. There have been other cases of alleged Medicare frauds tried in this courthouse, one by Judge Brient recently. Was there a mail fraud count in those cases?

MR. BATCHELDER: I am not sure whether we have the documents, but I believe there was, your Honor, and, indeed, there is another one also tried in which there were mail fraud counts.

MS. NEUGARTEN: I believe there was a recent case that Judge Pollack tried, United Statds v. Robert March, 76 Cr. 114, and in that there was a mail fraud count.

MR. BATCHELDER: The fact is Judge Weinfeld was not faced with the situation here.

THE COURT: Well, as you are well aware, a single act or a single cluster of acts can apply to more than one criminal statute and the defendant can be prosecuted under each statute, and if I give consecutive sentences I

mmtll9

think you would have a good point. But if I don't, then I wonder about the validity of the point.

MR. MARTIN: Your Honor anticipated my next motion, which is a multiplicty motion, and thatmay go somewhat to that, although, of course, I would not say that it will carry the day. But this is a totally different point. What I am saying is that the mail fraud statute was not designed to cover this situation.

THE COURT: I think I would not want to put my neck out quite that far, until I have gotten instructions from the 17th floor. I will take the matter under advisement.

MR. MARTIN: I would move to dismiss the first ten counts on the ground of multiplicity, in that they are also contained as false claims counts, and, therefore, I submit that it is multiplicitous. There seems to be a situation contemplated by Judge Brient in U.S. v. Pocono International Corporation, 378 Fed. Supp.1265, where he denied a pretrial motion on this ground, but said that he would consider it at trial if the proof did not show any difference for the two alleged offenses, and I think that is exactly what you have here.

THE COURT: Well, there is some difference.

MS. NEUGARTEN: Of course, the element of mailing

mmt120

is unique to the mail fraud.

MR. BATCHELDER: Well, he is citing a case. Could we ask Mr. Martin if that case deals with Medicare or Medicaid fraud?

MR. MARTIN: It is not Medicaid fraud.

MR. BATCHELDER: That answers the question. Indeed, your Honor, if you take multiplicity in a narcotics conspiracy case, you can charge substantive acts, charge them as overt acts, charge them as conspiracy. Now, in the case that was recently tried, U.S. v. Severino, whose citation I do not have, but tried before Judge Wyatt, in that case there were both conspiracy and substantive counts, and that would suggest that the same argument could conceivably have been made.

THE COURT: The same ruling. I will defer ruling on the motion. But for your planning purposes, operate on the assumption that it will be denied.

MR. MARTIN: I never operate with optimism, Judge.

There are other motions that I would like to make that have to do with really the individual counts of the indictment.

First, there is one count that I would like to address myself to very specifically, your Honor, and that is

mmt121

the Leon Wilcox count. Mr. Wilcox did not testify for the government. The government introduced simply some hospital records indicating that Mr. Wilcox was in the hospital during the time. The documents that have been furnished to me by the government indicate that Mr. Wilcox informed the government that Dr. Feldman did visit him in the hospital during the period, and it seems to me in those circumstances inappropriate to say that the government's case is made beyond a reasonable doubt as to the Wilcox claim.

THE COURT: What do you say to that?

MS. NEUGARTEN: Your Honor, I believe that several witnesses have indicated that the word "visit" has various applications. Indeed, Paul Stamps, who is the other hospital defendant, if I may refer to him, saidthat Dr. Feldman visited him in the hospital. He expressly said that Dr. Feldman did not treat him on that occasion, and all he did was take his Social Security number.

THE COURT: We are talking about Wilcox now. What evidence is there on Wilcox.

MS. NEUGARTEN: The statement that he made.

THE COURT: What evidence is there? I have got to dismiss, unless there is evidence which could convince the jury beyond a reasonable doubt that a false

mmt122

statement was made with respectto Wilcox.

MS. NEUGARTEN: The evidence is that he was in the hospital in the exact days that are the subject of claims for services and there was the witness from the Castle Point Hospital, Mrs.Lovel. She said that it was the practice of the hospital that physicians who rendered treatment to patients would have to record that on the hospital record.

MR. BATCHELDER: He could not have treated him in the hospital without the records reflecting it.

THE COURT: The forms specifically do have a notation at the bottom for treatment at O L, which means other location.. I believe they also have a space for treatment in the hospital. He didn't indicate either of those; he indicated home.

MR. BATCHELDER: He could not have treated him in the hospital. It is the same thing with Mr.Stamps, your Honor.

MR. MARTIN: Your Honor, I think it is different. We have Mr. Stamps here to testify.

THE COURT: In the instance of Wilcox, apparently he was in the hospital, and the form did say he was treated at home. Maybe he was treated in the hospital by the doctor, but there would still be a misstatement, wouldn't

mmt123

there?

MR. MARTIN: Then you will get to the issue of materiality.

THE COURT: Shouldn't that be an issue for the jury, instead of for me?

MR. MARTIN: I don't think so, your Honor. In this situation where you do have a witness who is not called to testify --

MR. BATCHELDER: Mr. Wilcox cannot be moved from the nursing home in Utica, New York. If we could get him here, we would have gotten him.

MR. MARTIN: That seems to me to underline the point, that he is unavailable. It seems to me when you have all these other counts, there is an area of unfairness here.

THE COURT: Your argument is addressed to the wrong person. I don't determine what counts the government will see fit to include; I only determine whether or not there is enough evidence to go to the jury, and I conclude that there is. You can make the argument that you are now making to me to the jury.

MR. MARTIN: Your Honor, the problem is I don't have Mr. Wilcox's testimony. He is in the nursing home.

THE COURT: I don't know why you can't make to

mmt124

the jury the same arguments you are making to me, that is the evidence does not show beyond a reasonable doubt that the defendant did not treat Mr. Wilcox on the dates indicated.

MR. MARTIN: I think this does tie in the prejudicial delay aspect of our original motion. We now are faced with this situation where a man who in 1973 is in the hospital and Dr.Feldman came and visited him several times. Now, as a result of thepassage of time he is not available to testify to that effect, and I think that is seriously prejudicial to the defendant.

THE COURT: What does Mr. Wilcox say?

MR. MARTIN: "I was in the hospital and Dr. Feldman came and visited me."

THE COURT: Whom did he say that to?

MR. MARTIN: To representatives of the government.

MS. NEUGARTEN: In 1973 or 1974. That is the point I made about Mr. Stamps and Mr. Roberts, and perhaps Mrs. Paschier's testimony, that Dr. Feldman may have made social calls.

THE COURT: I am going to permit it to stand. If you want to put in evidence in the defendant's case, I would have to consider their admissibility, those statements made to the government, in view of the unavailability

mmt125

of the witness.

MR. MARTIN: I will consider that offer at the recess.

THE COURT: Anything further?

MR. MARTIN: Yes, your Honor.

One other, and this is, I would now move to dismiss count 60, which is the Margarita Ocasio statement of June 9, 1972. That is a false claim referred to in the indictment. The problem I have with that, your Honor is that there have now been introduced in evidence three claims dated June 9, 1972. We do not know which one of those three claims is the claim referred to in the indictment,

THE COURT: May I see the Ocasio claims? Just those of June 9, 1972.

I would have to say that the doctor was pretty bssy on June 9, 1972, submitting three claims for the same patient.

MR. MARTIN: They cover different periods of time.

MR. BATCHELDER: I hand you what has been marked Government's Exhibit 165, which is June 9, Government's Exhibit 170, which is June 9, and Government's Exhibit 171, your Honor. Those are the three.

mmt126

THE COURT: How long ago did you let Mr. Martin know that there were three claims dated June 9, 1972?

MR. BATCHELDER: Mr. Martin came to our office with Investigator Howard and was shown virtually most all of the bills. We delivered the bills to him some time last week.

MS. NEUGARTEN: More than that, we delivered to him, I believe, shortly after our original pretrial conference a folder of invoices corresponding to counts in the indictment, if my recollection serves me properly, and I believe that this folder there would only have been one June 9, 1972, claim. That would have been the one in the indictment. When he received the other June 9, 1972, claims as part of the 3500 material, he would see there was more than one. But the one he received originally was an invoice corresponding to the indictment and it should have highlighted to him which one was at stake. That was in response to his motion for a bill of particulars.

MR. MARTIN: I have two problems with that, your Honor. One, I did receive several hundred of these invoices last week. I don't think I actually looked at the invoices. When I was with Mr. Howard, I might have. I will be perfectly honest, I didn't focus until I saw the chart today on the fact that there were three forms for the same day.

mmt127

MS. NEUGARTEN: You received a third production which you did not just mention; you received a folder of specific invoices corresponding to the indictment counts after our original pretrial conference in this matter.

MR. MARTIN: Yes.

MS. NEUGARTEN: There was one invoice there for every count in the indictment, and I believe only one invoice for each count. So you saw them, and last week you saw two more of the same date.

THE COURT: Well, what is the government's position, that all three of the claims submitted on June 9, 1972, are false?

MS. NEUGARTEN: The indictment only charges one.

THE COURT: But which one?

MS. NEUGARTEN: Exhibit 165, which I believe was in the folder which was originally given to him.

THE COURT: And that was separated from the others?

MR. BATCHELDER: Yes.

MS. NEUGARTEN: I have a Xerox of what I gave him.

THE COURT: And that contains just the invoice referred to in the indictment?

MS. NEUGARTEN: That is correct.

THE COURT: And how long ago was that given?

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MS. NEUGARTEN: Between the conference before your Honor and the conference before Judge Palmieri. That would be perhaps two or three weeks ago.

THE COURT: It was at least a couple of weeks ago?

MR. MARTIN: Yes.

THE COURT: Because Judge Palmieri sent the case to me a couple of weeks ago.

MR. MARTIN: Part of the problemI have, your Honor, is how do we know that this is the one referred to in the indictment? How does the jury know?

THE COURT: Well, it was in the folder given to you.

MR. MARTIN: The defendant is entitled to be indicted by a grand jury, not by a folder. It seems to me that you have a problem here, because looking at the indictment there is no way we can tell what the grand jury chose to charge this man with.

THE COURT: Does the government represent that Exhibit 165 is the invoice that was submitted to the grand jury and upon which count 60 of this indictment was based?

MS. NEUGARTEN: Yes. And it is further the government's position that the grand jury minutes would so reflect.

MR. MARTIN: Is that the only June 9, 1972,

mmt129

document that was before the grand jury?

THE COURT: With respect to Margarita Ocasio.

MS. NEUGARTEN: We believe, yes. We can doublecheck that, but I am almost certain.

THE COURT: Doublecheck that. I will deny the motion, subject to the government's confirmation of that.

Anything further?

MR. MARTIN: Yes, your Honor.

I think there are two areas of proof. There are, your Honor, the charts of military duty, and I would like to leave this aside for a moment. Except for those charts where the doctor was on military duty, the government has not offered any proof to show that on the specific days contained in the individual claim forms that are set forth in the indictment that Dr. Feldman did not perform services on any one of those specific days in the claim form. It seems to me they have to do that in order to satisfy this jury beyond a reasonable doubt that no services were performed on the days claimed to prove that those claim forms were, in fact, false. It seems to me all they have produced, your Honor, is an inference that some of these must be false, because if you are going to charge the specific claim forms are false, you have got to have some evidence that says this is the one. I think that

mmt130

the proof has not been provided with any of these claim forms, except as might be argued from the military service, and I would like to take that up separately.

MS. NEUGARTEN: Be[illegible] the military service there are, of course, the two hospi[illegible]l-category claims, the Paul Stamps claim and the Leon Wilcox claim.

Now, there is another count which is specific, and that is the Marion Paschier count. The proof showed that Mrs. Paschier was only [illegible]eated by Dr. Feldman occasionally, when the Hubbards were residing in her home, and Elizabeth Scott testified that the Hubbards were there initially for eleven months and then they came back at a subsequent time in 1973, and that the first eleven month visits commenced in March of 1971, terminating in February of 1972, and then they came back in 1973. So between February of 1972 and the date in 1973 the Hubbards were not there. Therefore, in September 1972 the Hubbards were not there. Therefore,Dr. Feldm[illegible] did not treat Mrs. Paschier. Those are again specific dates.

But getting to the point that Mr. Martin specifically made as to the remaining counts,the one that we referred to as runaway billing or overbilling, each invoice, as you have seen, bills for specific services on a multitude of dates. The accounts charged in the indictment

mmtl31

often have dates that are every third day, every fourth day, something like that. The witnesses as to those counts have testified that they never saw Dr. Feldman, they were never treated by Dr. Feldman every third day or every fourth day or every other day. So it is the government's position that as to any given invoice we don't have to show which days he did treat them, which days he did not treat them. It is enough for the jury to find he did not treat them as to the three or four days charged on that invoice.

THE COURT: You only have to show beyond a reasonable doubt that he did not treat on one of those days set forth on the invoice identified in the indictment.

MR. BATCHELDER: That is correct.

THE COURT: I believe there is enough evidence to go to the jury to permit the jury to determine whether the government has proven beyond a reasonable doubt that on at least one of the days recited in the invoice identified in the indictment the patient was not treated as claimed. I realize the government has not proven with respect to most of those dates the impossibility of treatment or the negative fact of non-treatment, but I believe there is enough evidence to go to the jury to permit the jury to determine whether the government has carried that burden beyond a reasonable doubt.

MR. MARTIN: If I may just add, your Honor, I would agree with you that the jury would have to find that on at least one of those dates services were not performed. I think it goes further and that is that the jury would have to be unanimous as to which of those dates there were no services performed.

THE COURT: No, I don't believe so. I think they would only have to find that at least one of the dates on the invoices was false, that is, there was no treatment on that date, on one of the dates, but they would not have to agree on the same date as long as they all would agree that the invoice was false beyond a reasonable doubt. That would be enough.

MR. MARTIN: It is like a case that I am somewhat unfortunately familiar with, U.S. v. Natali, where there was one count, two specifications, and the Court said that the jury had to be unanimous as to which specification was, in fact, false. There they said that they thought the charge adequately covered it. But I submit to you this is a specification where there is in each count five things, service on five different dates.

THE COURT: I understand your point. You didn't ask for a bill of particulars here, and the charge was that a particular invoice was false and you didn't ask to specify

mmt133

which one of the dates on the invoice was false, did you?

MR. MARTIN: I did.

THE COURT: You did?

MR. MARTIN: Exactly. That was denied.

MS. NEUGARTEN: We argued that before Judge Palmieri.

MR. MARTIN: It was denied on the ground I was asking for the government's evidence. That was the purpose of that request, because I always thought that was a central issue.

MR. BATCHELDER: May I briefly be heard? If we consider the testimony, it would indicate that with regard to Jule Adams, Horowitz, Jacklyn, Ocasio, Paschier, Perrotta, Roberts and Stamps, none of these people ever signed those documents at all. So it is really irrelevant as to what specific date.

THE COURT: I think it suffices for the government to charge that an invoice contains a material false statement. Because of the peculiar circumstances of this situation, we have here elderly patients who cannot remember four years later the specific dates on which they were visited by the doctor. They can only remember that they only saw him two or three or a limited number of times. Therefore, it would be impossible for the government to

mmt134

prove which of the thirty or forty or fifty claim dates is false and which is true. They can only prove that the patient was not visited on all the dates claimed in the particular invoice, and I think to hold them to any strict standard of proof would be to allow, indeed invite, the very kind of fraud that the prosecution is designed to prevent. I think it is very much to the public policy to prevent that kind of fraud; it is in the public policy not to convict innocent people, to make sure that people are convicted for the crimes they committed. It is also important that they be given reasonable notice of what they have to meet at the trial. I think the indictment gives reasonable notice here, and superficially attractice as your argument is -- and perhaps I should not use the word "superficially" -- as attractive as your argument may be, I feel that the government in this case has done all it could to inform the defendant of exactly what he is charged with doing that is wrong, and in their proof they have gone as far as they can. The jury will determine whether they have gone far enough, but I think the government has gone at least so far that I should not take the case away from the jury and rule as matter of law that the government has not gone far enough. If I am wrong in this, I am willing to be educated by my betters

mmt135

MR. MARTIN: Since I did not include myself in that category, I will go no further in my argument on that point. But what your Honor has said about that issue really brings me to the next point I was going to make. Your Honor said that it is unfortunate because of the passage of time now these people cannot remember events of three or four or five years ago. Your Honor, the government could have brought this case in 1973. At that time they conducted their investigation. That is the basis for the motion made pretrial, where we alerted the Court to this problem. There had been a substantial delay bringing this case to trial.

THE COURT: I don't think he has been seriously injured in that respect, because I don't think the likelihood is that the patient would be able to recall the specific dates on which he was treated any greater a year after the event than three or four years after the event. I don't think the additional two or three years' delay has terribly helped the government or hurt the defendant in the respect you are referring to.

MR MARTIN: Your Honor, I would like now to move to the Army chart. The government as its only proof as to some of these counts relies on the fact that during the period in question, overall period, there was annual

mmt136

military training for Dr. Feldman's reserve unit, and the testimony of Sergeant White is that Dr. Feldman participated in this training. only proof, for example, insofar as some of these instances is various dates that are weekend dates when the testimony is that Dr. Feldman was free from 4 o'clock on Friday afternoon until 6 o'clock Monday morning, and the training took place in Fort Monmouth, New Jersey, which is simply not that far away as to give rise to an inference, indeed, to give rise to something that would amount to proof beyond a reasonable doubt that he did not, in fact, return to his home area and treat the patients involved.

THE COURT: Well, even without taking the stand himself, I am sure he can adduce evidence that he had gone home on those weekends from someone else.

MR. MARTIN: He does not have that burden. The government has that burden beyond a reasonable doubt.

THE COURT: I am going to leave that to the jury.

MR. BATCHELDER: The jury can infer that his client was not coming all the way from Fort Lee, Virginia.

THE COURT: That is a matter of degree.

MR. BATCHELDER: He is specifically referring to Fort Monmouth, New Jersey. If he wishes to commute back and forth on those weekends, your Honor, the government

mmt137

submits that it might be possible, there is a possibility; there is an extreme unlikelihood as to Fort Lee and Camp Drum. Indeed, on some occasions he was not there with his car.

THE COURT: I think you have quite a persuasive argument that the government has not sustained its burden beyond a reasonable doubt. But I am going to let the jury make that decision and not take it away from them. This is a matter of degree. If he had been in San Francisco over the weekend, I think the jury would almost be compelled to conclude that he had not come home.

MR. MARTIN: But the testimony is from Sergeant White that people regularly went home. I have been talking about Fort Monmouth, New Jersey, not San Francisco.

THE COURT: But I don't think there was any testimony that anybody went regularly home.

MR. MARTIN: The witness testified that people went home to Beacon, New York; they were people in the same unit, from the same area.

MR. BATCHELDER: He said people may have gone home. He said you could stay there or not. Your Honor again, I don't want to clutter up the record, but he was the commander of the unit, or he was the chief medical officer. I think the jury can infer given the past

practices he did not commute from Fort Lee, and whether he commuted is a jury question, and all the government has to do is to introduce enough evidence to indicate that there is a prima facie case here, and the jury can either accept it or reject it.

THE COURT: I have to determine whether a jury of reasonable men could conclude it beyond a reasonable doubt.

MR. BATCHELDER: Yes. And if I could draw your attention to the chart, he treated on Monday, he treated on Thursday, he treated on Tuesday, he treated on Thursday, he treated on Wednesday. Your Honor, given that pattern of treating when he was on duty, the government submits a group of people could well infer that he did not break his track record of treating while he was on duty by going home to treat on that weekend, despite the geographical limitations. Your Honor put your finger right on it, and, indeed, here is the Sunday that we all know he has to be there.

MS. NEUGARTEN: Your Honor, there is another piece of evidence both as to Betty Friedman and as to Mildred Horowitz, and that is that Paul Friedman, Betty Friedman's son, testified that the exhibit referred to there, Exhibit 95, having what is purported to be Betty

mmtl39

Friedman's signature, was not, in fact, his mother's signature, and that lends a further element of proof to those counts. I believe that the Mildred Horowitz signature referred to here may well have been among the Mildred Horowitz' exhibits that Mr. Caputo referred to.

MR. BATCHELDER: Written by Dr. Feldman, your Honor.

THE COURT: I am going to deny the motion.

MR. MARTIN: I have nothing to add.

THE COURT: Now it is 3:20. How much time will you need to make your decision as to what you are going to do in the defendant's case?

MR. MARTIN: Well, your Honor, I would like to think about it overnight.

THE COURT: Wouldn't we all. But our time limitations are such that I cannot give you overnight, for if you decide to put on a case and it takes tomorrow morning, then the summations would have to go over until Thursday afternoon, because as I have already told you, I have to go to Chicago to make a speech Wednesday night, Wednesday evening, and come back Thursday morning.

MR. MARTIN: We have at least an hour today. May I suggest we start at 9:30 tomorrow morning?

MS. NEUGARTEN: We may also have a rebuttal case

mmt140

if he puts in a case of his own.

MR. BATCHELDER: He has his witnesses here. It is incredible to believe, your Honor, that he does not know when he has been in this case all this time whether he is going to put his client on the stand or whether he is going to call witnesses.

THE COURT: Well, he is correct that if I give him even 20 minutes, we will only have 45 minutes left, because I told the jury I would let them go early, and I indicated to you previously that meant about 4:30, so that they can vote today. If we start at 9:30, we will make up 30 of those minutes.

MR. BATCHELDER: If he could put his witness on, we can get in the direct.

THE COURT: He has not even made up his mind, he represents to me, whether he is going to put a case on at all.

Is that correct?

MR. MARTIN: Your Honor, I will put it this way--

THE COURT: If you have a witness you know you are going to put on, let us use the time for your benefit, as well as mine.

MR. MARTIN: I am not the master of my fate in this situation.

mmt141

THE COURT: Do you want five minutes to consult with your master?

MR. MARTIN: Why don't I take five minutes and see?

THE COURT: All right.

(Recess.)

(Jury in box.)

THE COURT: I might tell the jury that the government has now closed its main case and it is now up to the defendant to decide whether or not he is going to put on a case.

Have you made a decision, Mr. Martin?

MR. MARTIN: Your Honor, I call Evelyn Feldman at this time.

THE COURT: All right.

Come right up, Mrs.Feldman, please.

mmds 1-2

B1

E V E L Y N F E L D M A N, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

11/9/76
10-28-76

US
v
Feldman

76Cr.44

Hon.W.C.Conner
D.J.

DIRECT EXAMINATION

BY MR. MARTIN:

Q Are you the wife of Dr. Feldman, who is seated here in court?

A Yes.

Q Tell me this, Mrs. Feldman, are you employed outside the home?

A No, I am not.

Q How long have you been married?

A Twenty-three years.

Q I am having a little trouble hearing you.

A Twenty-three years.

Q How long have you lived in Beacon, New York?

A Twenty-three years.

Q Was there a time when your husband worked down here in New York?

A Yes, he did. He worked in Queens.

Q Did there come a time in 1968 when he took employment up near your home at the Harlem Valley State Hospital?

A Yes, he did.

mmds 3 E.Feldman - direct

Q Directing your attention to that period, up until today, would you tell us, did your husband have any practice other than his employment at the Harlem Valley State Hospital?

A Yes, he had a private practice outside the hospital.

Q Did he also have an office in his home?

A Yes.

Q Did he have a telephone at the home that was used for his practice?

A Yes, he did -- he does.

Q Did he have a nurse who answered those calls?

A Myself.

Q You took all the calls? Is that right? There was no one else associated with that office?

A No, I was the nurse, secretary and wife.

Q Now, could you tell us something about your husband's practice and home life? What were the normal scheduled hours that he worked at the hospital?

A Well, his hours were from 8:00 until 4:30.

Q And after 4:30 did he just come home and stay with you?

A Never.

Q Would you give the ladies and gentlemen of the

jury some idea of what your husband's weeknights were like? What time he got home?

A Well, since he has been back in Beacon, he is working in Beacon, which is near his home.

Q Let us talk about the time first when he was in Harlem Valley.

A Well, there he spent a lot of time in the hospital, and on call -- at least two nights a week -- at least one. In between he had a big private practice up in Wingdale, where the hospital was located. These other people he saw on his lunch hour and in the afternoons, evenings. He would come home quite late, because he would see his patients.

Q He would not get home after his normal hours at the hospital?

A No. 11:00, 11:30.

Q There are nights he didn't get home until 11:00, 11:30?

A Almost every night.

Q What about the weekends?

A Same thing. The same.

Q When he was not on duty at the hospital, would he stay at home?

A No, he was out on Saturdays. He would make up

mmds 5 E.Feldman - direct

his extra patients that he could not see during the weekdays. Saturdays and Sundays, he has patients that live out in the country, that do not have transportation, that are bedridden, and he would make it a point to see them on his time off. There were times I went with him.

Q This was his practice throughout those years?

A Yes.

Q Now, there came a time when his hospital assignment moved a little closer to home?

A Right.

Q Did that change the hours at which he would get home at night?

A It got worse, because he still kept the practice that he had in Wingdale, which is 25 miles from home, and after he was through at the hospital he would visit his patients 15, 20 miles away. Some of them are over. Well, I guess you have to know the area. Some of them are in the countryside, across the Newburg Bridge, and are maybe 30 miles away, and he made his rounds and visited all the people that didn't have transportation that were bedridden.

Q Were there occasions where for approximately a two-week period your husband would go off to military service, to camp?

A That is true, yes.

mmds 6 E.Feldman - direct

Q I want to direct you first to the year 1971, when the unit was then at Fort Monmouth, New Jersey. Did you spend any time down there?

A Yes, I did. Mansquan, which is near the base, and I went down with my family. We had a little house and he would commute every weeknight.

Q How long were you there?

A A week.

Q During the week was your husband on duty?

A Yes.

Q And the following weekend, what did you do? Go back to Beacon?

A We went to New Jersey, we stopped off at New Jersey, and then we went back to Beacon.

Q And during that period when you were at Mansquan, that week, do you know of anybody named Mildred Horwitz?

A Yes.

Q Who is Mildred Horwitz?

A She is my aunt.

THE COURT: Your aunt?

THE WITNESS: Yes.

Q Did Mrs. Horwitz visit with you during that week?

A She stayed with us.

Q Now, there was another year when he was at

mmds 7 E.Feldman - direct

Fort Drum in New York for a two-week period. Did you go to Fort Drum?

A No, I didn't.

Q Where did you stay?

A In Beacon.

Q Now, during the time thathe was at Fort Drum did you have any contact with any of his patients?

A Surely. They called and left their messages, and my husband would call down to receive his messages, surely.

Q Where would he be when he called?

A At the camp, at Fort Drum.

Q You would relay the messages from the patients?

A Right.

Q Did he then contact them or did he give you information?

A Yes. Whichever was more convenient or more urgent. If they needed immediate attention, I would tell him.

Q Did that hold true in 1975, when he was at Fort Dix.

A Always, whenever he was away.

Q Was there a time when his unit was in training at Fort Lee, Virginia?

A Yes.

Q Now, at that time did you spend any time down

there?

A Yes.

Q How long?

A A week.

Q When did you return to Beacon?

A From Sunday to Sunday.

Q You came up the following Sunday?

A Sometimes Sunday, yes.

Q Did Dr. Feldman return with you?

A Yes.

Q Then he went back down again? Is that correct?

A Yes.

Q You testified, I believe, that patients would call you from time to time when Dr. Feldman was away on leave. What about normally during the week when he was at the hospital and making these rounds? Did you get calls?

A All day long.

Q And some patients you got to know pretty well on the phone? Some better than others?

A Right.

Q Was there a man named Joseph Perrotta, who called?

A Right.

Q Could you give us an idea, did he call rarely or often?

mmds 9 E.Feldman - direct

A Often. I could not tell you how many times. I used to jot the messages down on pieces of paper, and never knowing I was going to have to save them.

Q So you didn't keep them?

A No.

Q Was there a man named John Roberts who called?

A Right.

Q What about a lady named Jule Adams?

A Yes, a lot.

Q Can you give us any idea how often she would call?

A Well, it is hard to say, but I was very familiar with her voice, and we talked a lot, and it seemed frequently. I can't tell you how many times; several times a week.

Q Excuse me?

A It seems like several times a week.

Q Are you familiar with a man named Paul Stamps?

A Yes.

Q Did Paul Stamps ever spent any time overnight at your house?

A Yes.

Q Will you tell the ladies and gentlemen of the jury about that incident?

A Well, he is a man who lived in the back of a

mmds 10 E. Feldman - direct

warehouse all by himself, had a little cot with a little stove, and he had a drinking problem. He had been once quite a good worker, made a lot of money, but his drinking had gotten the better of him, and he lived in this warehouse, and one evening I came home from my women's meeting and I found him in our basement. My husband had brought him to the house.

My small sons had helped. They had gotten him in bed down there and they covered him, and he was, I guess, very, very sick. He was throwing up and he was intoxicated; he was shaking; he was very, very sick. I thought he was going to die.

And we kept him warm, fed him liquids. He stayed there for about two days. He could barely stand on his legs; he was shaking; he was in very bad shape. And we kept him until he was able to get back on his feet, and then we sent him back home. My husband brought him back to where he lived.

I gave him some lunch and some fruit and some things to take back with him, and he went back. I have not see him since.

MR. MARTIN: I have nothing further of this witness, your Honor.

mmds 11 E.Feldman - cross

CROSS-EXAMINATION

BY MR. BATCHELDER:

Q Mrs. Feldman, my name is Harry Batchelder. I am an Assistant United States Attorney. I would like to ask you a few questions, and if you can't hear me, ask me to speak up.

I believe you testified that your husband was engaged in medical practice in the Beacon area in the years 1971, 1972, indeed, is engaged there at the present time? Is that correct?

A Yes.

Q I believe you testified that he had duty at Harlem Valley from 8:00 to 4:30?

A Right.

Q Isn't it also a fact on certain evenings he had reserve duty in town?

A Yes.

Q Now, can you recollect what time that reserve duty started?

A They were Thursday nights at 8:00 o'clock.

Q And they lasted until what time?

A 10:30, 11:00.

Q Would you husband generally come home around 11:00 or 11:30 on those evenings?

mmds 12 E. Feldman - cross

A 12:00.

Q Is it fair to say that your husband generally came home around 11:00 or 11:30 after having made all these calls?

A Right.

Q By the way, you have two sons?

A Three.

Q And two of them are presently in college?

A Three.

Q Three of them?

A Yes.

Q One is at Massachusetts Institute of Technology?

A Graduated.

Q Was that last year?

A Yes.

Q And the other two sons, ma'am, what colleges are they at?

A One is at Union and one is in Community College.

Q Now, calling your attention to, I believe, 1971, when Dr. Feldman was at Fort Monmouth at annual training, is it fair to say that you went down there the first week with your husband?

A That is correct.

Q And you rented a cottage on the Jersey shore?

mmds 13 E.Feldman - cross

A Right.

Q Did Mrs. Horwitz come with you?

A Yes.

Q She came down to the Jersey shore with you that first week?

A Yes.

Q She never did go back up to Beacon, did she, with you?

A That particular weekend?

Q The end of that first week.

A That first week we were all down there.

Q And your husband's office is located in Beacon?

A Yes.

Q Let me ask you this, did Mrs. Horwitz come back with you to Beacon that first weekend, if you recollect, or did she stay down there or did she return home?

A We went back with her to New Jersey.

Q But you did not go back to Beacon with her?

A I don't think so.

THE COURT: Hasn't it been established that Dr. and Mrs. Feldman went back to Beacon that weekend?

MR. BATCHELDER: I am trying to establish whether Mrs. Horwitz went back.

Q It is your recollection that she did not go back

with you?

A No, she didn't.

Q Now, let me ask you, in 1973 your husband went to Fort Lee, Virginia? Is that correct?

A Right.

Q You did not go to Fort Lee, Virginia?

A I did.

Q You did go?

A Oh, yes.

Q Let me ask you, did you stay there the whole week with your husband in Fort Lee?

A Yes, I did.

Q Was your husband there every evening with you at Fort Lee?

A Yes.

B3 Q And did he spend that weekend in Fort Lee with you or in the surrounding area?

A That weekend we headed home and stopped off at Washington.

THE COURT: We are talking about the middle weekend.

THE WITNESS: Yes, we had car trouble.

Q Is it fair to say that you did not make it home because of car problems?

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mmds 15 E.Feldman - cross

A Right.

Q Then did you continue on, ma'am?

A Well, it was very complicated. We had to find a way to get the car fixed, and we had to borrow a car. It was very complicated, but we did get home.

Q You did get home to Beacon?

A Yes.

Q Did your husband go with you?

A Yes.

Q Did your husband then turn around and come right back?

A Yes, he did.

THE COURT: So he didn't spend any time in Beacon to speak of?

THE WITNESS: No, he just went right back.

Q Now, calling your attention to Camp Drum -- by the way, do you know how far Camp Drum is from your home?

A Well, it is up near the Canadian border.

Q It is five or six hours away?

A I have never been there.

Q Now, in 1972, I believe your husband went to Camp Drum? Is that right, ma'am?

A Yes, I suppose.

Q Did you go with him to Camp Drum, ma'am?

mmds 16 E.Feldman - cross

A No.

Q Did he come home every evening from Camp Drum to see you, ma'am?

A Not every evening, but weekends.

Q He came home weekends? He then returned back to Camp Drum on that Sunday night?

THE COURT: The question is whether he returned to camp on that Sunday.

THE WITNESS: Yes.

Q And did he come home on Sundays or Saturdays or what date, ma'am?

A Sometimes Friday if he got off earlier.

THE COURT: We are talking about 1972, Camp Drum now.

THE WITNESS: Well, all camps, whenever he could get off early on Friday he would come right home.

THE COURT: And he did come home on Friday that weekend?

THE WITNESS: That particular year, probably.

THE COURT: It was 1972?

THE WITNESS: Right.

Q I believe you testified that Jule Adams had called you on numerous occasions?

A Right.

Q Had you ever gone with your husband when he treated Jule Adams?

A Well, I went with him many times in the car, but I never went in the house; I just went on the rides.

Q You never did see him treat Jule Adams?

A No, but I spoke to her numerous times on the phone.

Q Where does she live?

A She lives in Forrestal Heights. She lives about three minutes from us, four minutes.

Q Around the corner?

A Two corners.

Q With respect to Margerita Ocasio, did you ever go with your husband to Margerita Ocasio's home?

A She is the one in Plattekill? I don't remember.

Q Just one second, ma'am. No, ma'am, she lives at 442 Main Street in Beacon.

A Wherever it was, he went to see her. I just sat in the car and we made the rounds. We went from house to house. That was my outing.

Q Do you know whether you went to Mr. Perrotta's home? Do you know where he lived, ma'am?

A I know he lives around -- he didn't tell me he was going to see so-and-so; I just went with him.

Q Did he tell you where he was living and what he wanted?

A Yes, but I don't remember the address, the phone number.

Q You do act as your husband's secretary?

A Yes, but we are very casual about it. I just took notes.

Q With regard to Mr. Stamps, ma'am, is that the only time he ever stayed at your house, ma'am?

A That time, yes.

Q Did you ever see Mr. Stamps drunk on several occasions, ma'am?

A I don't think I would know him in the steet. I think I met him, I just know him from my house. All I can tell you, he was very thin, sick, a toothpick. He was a very sick man. He is well-known in town. He is known in town.

Q But you never saw him drunk, other than on that occasion?

A I don't think so. I don't think he even goes out of his room very much. He is a worker; he works around in the place that he lives.

Q I believe you stated you thought he might die that evening?

A Well, he looked very bad.

mmds 19 E.Feldman - cross

Q Well, did you ever think to take him to a hospital, ma'am? Was it ever considered?

A I don't know. My husband was taking care of him. He took as good care of him as he would get in the hospital, maybe better.

MR. BATCHELDER: I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. MARTIN:

Q When you were down in New Jersey and Mrs.Horwitz was staying with you, did your husband spend the night with you, even though he was at camp there?

A Yes. That is why I went.

MR. MARTIN: Nothing further.

(Witness excused.)

* * I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability from my (our) stenographic notes of the proceeding.

Official Court Reporter
U. S. District Court

mmtl

MR. MARTIN: May we approach the bench, your Honor?

(At the bench.)

MR. MARTIN: I took the time before to talk to Mrs. Feldman and have her testify. I do expect Dr.Feldman will be the next witness, but I would really ask your Honor to have the half hour this afternoon to let me prepare him.

THE COURT: Is he going to be your only other witness?

MR. MARTIN: We are trying to get some of his patients to come down. They should be very brief, two or three.

THE COURT: It is five minutes after four now. How long will Dr. Feldman be on direct?

MR. MARTIN: No more than 45 minutes, Judge.

MR. BATCHELDER: We will have rather extensive cross. Why not put him on now?

MR. MARTIN: I have not had an opportunity to go into the matter with him. I would be very happy to start with him at 9:30.

THE COURT: We are going to start at 9:30 in any event, because we are going to quit early tomorrow. We are only talking about 25 minutes. All right.

(In open court.)

mmt2

THE COURT: I have indicated that I would let you go home early so you will have time to vote. This seems to be a logical stopping place, so we are going to recess now until tomorrow morning. Tomorrow is going to be a short day, because, unfortunately, I have a long-standing commitment to speak tomorrow night in Chicago, and I have to catch a plane right after lunch. So in order to make the maximum use of our time, I would like to start at 9:30 in the morning, and we will recess around 12:30 or 12:45, and that will be our complete day. I will be flying back from Chicago on Thursday morning, so we will start at 2 o'clock on Thursday afternoon. So you will have off Wednesday afternoon and Thursday morning. Of course, you will get a full day's jury fee for each of those two days.

Have a good evening. Don't forget to vote and we will see you at 9:30 in the morning.

(Jury excused.)

MR. MARTIN: Two matters: One, I want to hand up the defendant's requests to charge; the other is, I just really want the record completed that I would submit a memorandum about the right to call Miss and I am going to hand that memorandum to you with the representation that I don't intend to call her, but since

mmt3

the government has filed something of record, I wanted to have something on that.

THE COURT: What are you telling me? Are you telling me that regardless of what I rule, you don't intend to call her, and having gone to the trouble to prepare this, you want to put it on file?

MR. MARTIN: Yes, particularly since the government has put something in on this issue, but you don't have to take the time to read it, because I don't intend to call her.

THE COURT: Thank you.

(Whereupon, an adjournment was taken to November 3, 1976, at 9:30 o'clock a.m.)

mmtl

UNITED STATES OF AMERICA

v.

SEYMOUR C. FELDMAN.

New York, November 3, 1976,
9:55 o'clock a.m.

Trial resumed.

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(Jury in box.)

MR. MARTIN: Your Honor, may I approach the bench for a moment?

(At the bench.)

MR. MARTIN: The defendant is late arriving. He is down in his car doubleparked. He came running in. Can he have time to park, because he has an elderly person with him in his car?

THE COURT: I don't know. Where is he going to park it?

MR. MARTIN: There is a parking place in Chatham Towers and one behind here. I would be happy to go with him.

THE COURT: I don't know how that would expedite matters. All right.

MR. MARTIN: Thank you, Judge.

(In open court.)

THE COURT: We are not quite ready to start yet. There is a slight hitch, so we will excuse you for another

ten minutes or so.

(Recess.)

THE COURT: When I said it was going to be a short day, I had no idea how short.

MR. MARTIN: Your Honor, the defendant calls Dr.Feldman to testify.

THE COURT: May I see you at the bench just a minute.

(At the bench.)

THE COURT: Do you want to call some of the others? I don't think we will finish with Dr. Feldman today, from what Mr. Batchelder tells me about the length of his cross-examination.

MR. MARTIN: Thank you. I would rather call Dr. Feldman.

mmds 1

United States of America,

-vs- 76 Cr. 44

Seymour C. Feldman

Hon.
W.C. Conner
D.J.

New York, New York
November 3, 1976

S E Y M O U R C. F E L D M A N, called as a witness on his own behalf, being first duly sworn, testified as follows:

B1

DIRECT EXAMINATION

BY MR. MARTIN:

Q Dr. Feldman, would you please tell the ladies and gentlemen of the jury what your educational background is?

A Yes. I am a graduate of New York University School of Medicine, year of 1950. I had a rotating internship at the Queens General Hospital, now known as Queens Hospital Center, Jamaica, New York, 1950 to 1951; I had a residency in neuropsychiatry from 1951 to 1952 at the St. Elizabeth Hospital, Washington, D.C.; from 1952 to 1953 I had a residency in neuropsychiatry at the Veterans Adminstration Hospital, Bronx, New York; from 1953 to 1961 I was a staff member, known then as a supervising psychiatrist at the Mattewan State Hospital for the Criminal Insane

mmds 2 S.Feldman - direct

in the State of New York; in 1961 I became an assistant director of the Queens After-Care Clinic in Jamaica, New York. I held that post until 1968, March, 1968, at which time I became on a lateral transfer, assistant director at the Harlem Valley State Hospital in Wingdale, New York.

After that I transferred laterally to the Mattewan State Hospital for the Criminal Insane, in June, 1974, and have held that present post ever since.

In addition to that, I was a commissioned officer, United States Army Reserve Medical Corps from July, 1953, at the time of the Korean hostilities. I am still commissioned, but I am presently in the Control Group, and was on active reserve duty until September, 1976.

I maintained a residence at 620 Wolcott Avenue, Beacon, New York from 1953 -- pardon me -- from 1954, when I was staff member of the Mattewan State Hospital, and until the present time, and in so doing, having a residence at 620 Wolcott Avenue, Beacon, New York, I maintained a medical office there.

Q Do you have a special room on your house that serves as your office, Doctor?

A Yes.

Q Would you describe to the ladies and gentlemen of the jury generally the nature of your private practice?

mmds 3 S.Feldman - direct

A My practice consists of psychiatry and general medicine.

Q Would you tell the ladies and gentlemen of the jury when you conduct this private practice and where, basically, your patients reside?

A Yes, the patients reside in the surrounding communities, mainly of Dutchess County. There are a few in adjoining counties, because Beacon, the city of Beacon, is a part of Dutchess County and adjoins Orange County and Putnam County.

Q Orange County is directly across the bridge?

A Yes, and my office hours are variable, and generally include those days when I am either on pass from hospital duties, or those hours when I am not on duty, on a working day, business day at the hospital.

Q Do you generally see your patients more in your office or in their own homes?

A I try to see my patients in my office, but there are many exceptions and circumstances in terms of some of these patients being bedridden or feeble or having no transportation, and so on.

Q With regard to the patients that you would have who would be on Medicare, can you tell us where, generally, you would see those patients?

mmds 4 S.Feldman - direct

A Well, many of them are seen at their homes. There are two classes of Medicare patients, one of them being those who are 65 and over, and many of them are feeble, or it would be dangerous to have them make the effort to come to my office, and the other class of Medicare patients are those who become disabled before age 65 and after two years of being on such Social Security disability, then qualify for Medicare.

Q Doctor, how do you determine when you are going to go to a particular home?

A Well, very commonly, especially during the time I was employed at Harlem Valley State Hospital, when I first acquired a certain number of Medicare patients, it was my practice to make rounds on given days, given times in a circuitous manner, taking into account the hours I spent at the State Hospital and after said hours, or on leave days I would see a good number of these Medicare patients.

Q In general, weeknights, at what time would you complete your rounds and get home?

A Well, very often it would be quite late because of the distances involved, sometimes climate conditions, other trips for other purposes, but in general I would very often be occupied, let us say, from 4:30 until well into the evening, seeing these patients on a regular basis and

providing them with services.

Q What about on weekends?

A The weekends, too, I would have generally an itinerary in which I would attempt to see these patients, depending on the nature of their illness, whatever emergencies might arise and so on.

Q Doctor, I am now going to ask you some questions about various patients whose names are referred to in the indictment.

First, I would like to put before you request for Medicare payments dated -- these would be all for Jule Adams, and I want to identify the dates: 6-30-72, 6-18-72, 6-6-72, 4-11-72, 3-13-72, 1-19-72, 12-25-71, 12-14-71, 10-24-71, 9-2-71, 6-6-72, 5-16-72, 1-21-72, 8-16-71, 7-20-71 --

I am sorry. I just realized that I repeated some. The last Jule Adams date should have concluded with September 2, 1971. The others were forms that I would refer to later.

Would you look at those forms, Dr. Feldman.

THE COURT: The dates you gave were the dates of the form. Each form may cover a number of visits on a number of dates?

MR. MARTIN: Yes, those are the forms referred to in the indictment relating to Jule Adams, and the dates I gave correspond to the date in the indictment.

mmds 6 S.Feldman - direct

THE COURT: Have you finished looking at them, Doctor?

THE WITNESS: Yes.

Q Are each of those forms that you mail in to request payment for Medicare?

A Yes.

Q Will you tell us the nature of the Jule Adams' problem for which you were treating her and the services that were rendered?

A Yes, I encountered Jule Adams at her request in 1971. She knew that I was taking care of other patients in the same building. It was a housing development.

Miss Adams is an outgoing individual who knows many people in the building, and she became aware that I was treating some of the other tenants, so she called on me.

I found her to have hypertension, and I suggested that she have treatment for that. I also noted that she had an arthritic-type condition in both her knee joints, so I treated her for both conditions.

Some time later, while serving as a matron at the City of Beacon Jail, she claims that she was kicked by a prisoner, and the lesion appeared to be a thrombo phlebitis of the knee in close proximity to the arthritis of the knee joint. So I had two different problems: She had her

original hypertension and arthritis, and superimposed on that was a Workmen's Compensation claim consisting of thrombo phlebitis.

Well, I administered to her an elastic bandage and medication known as butasoladine, which could be effective in both conditions, and there was an improvement. I treated her for the Workmen's Compensation claim separately from her hypertension, to which it was unrelated, and some time during the course of that treatment the Compensation refused her further treatment.

I felt this was a condition that would not go away quickly, and so I continued to treat her for all these conditions as listed in my diagnostic category of thrombo phlebitis and hypertension, even though the Workmen's Compensation bills were no longer honored. Some time along the course of the treatment, she also had respiratory infections, and also on taking a urinalysis I found occasionally she spilled sugar; she didn't do this for long, and I felt that the diabetes no longer required any supervision. And she remained fairly stabilized, and approximately the mid-summer of 1972 I did not see her with the frequency I had before. And, also, at that time I went away to summer camp, and after that there were a few contacts.

Q Doctor, if you look at those forms, each of

them has on it a column marked, Date of Service. Do you see that?

A Yes.

Q Did you render services to Jule Adams on those dates?

A Yes.

Now, I wish to state that the services were a bundle, they were a package of services, such as diagnositc checkup on each occasion as to the lesion she had, providing medication, such as the drugs I mentioned before, butasoladine, drugs for her hypertension, adjustment of the Ace bandages if I felt it was necessary, and there were times my corresponded on her behalf for Workmen's Compensation benefits to which she might be entitled. I discussed this case with her frequently, every time I saw her. I told her I though the case should remain open in case there were future complications, and she agreed.

Q Doctor, the form has on it several columns and dates. In column 7 there is the date of service. The next column says place of service, and in most instances, and I believe I am right, in all instances the letter "H" is set forth on those forms in this column. Is that correct?

A Yes.

Q Were each of the services referred to in

mmds 9 S.Feldman - direct

column 7, that is, the services on the dates set forth there, were they in all instances actually performed at the home of Jule Adams?

A In the majority of instances the place of service was the home.

Q What service would be included that would not actually take place in her home?

A Well, such matters as -- well, obtaining the medication, which I did by purchase in drug stores, and the correspondence, of course, with Workmen's Compensation. These other things took place at my office. But aside from that, the majority of services were rendered to the patient in her home.

Q Doctor, at the time you submitted those requests for Medicare payments, did you believe that you were entitled to the amount of money set forth as the claim for your services?

MR. BATCHELDER: Objection as to form and objection to what he believed at the time.

THE COURT: Yes. Overruled.

A I believe that the billings were fair and proper and proportional to the services rendered and the amounts expended on my part for the purchase of medication, such as butasoladine, which is an expensive medication.

mmds 10 S. Feldman - direct

THE COURT: Well, that is not quite complete.

A (Continuing) Yes, I believed that this was a fair assessment of the value of the services rendered. The Medicare, I might add --

MR. BATCHELDER: Your Honor, could we strike that?

MR. MARTIN: Just answer the question.

(Continued on next page.)

mmpl 11 S.Feldman-direct

Q Doctor, I want to put before you another series of invoices, this time for a patient named John Roberts, and these are invoices dated June 6, 1972, May 16, 1972, January 21, 1972, August 16, 1971, July 20, 1971, June 28, 1971, and April 25, 1971.

Would you look at those invoices, please?

Before I ask you that, let me ask you one other question. At the time you filed these requests for Medicaire payments relating to your treatment for June Adams, were you aware, do you know whether or not Miss Adams would receive from Medicaire a statement of the charges that you had submitted?

A Yes, we received similar statements simultaneously.

Q Now, if you would look at the John Roberts forms, would you tell us, sir, what is it that you were treating Mr. Roberts for?

A Yes. Mr. Roberts had diabetes mellitus and essential hypertension and a hernia, which I did not state.

Q What treatment did you give Mr. Roberts?

A Yes. We started with such medications as orinase --

Q Keep your voice up, please.

A I found that this patient did not spill a large amount of sugar, and some time during the course of the treatment I proposed to him that he treat the diabetes with diet alone. Now, this implied you can treat a diabetic with diet alone if he restricts his intake of carbohydrates, and so many times when I visited him in his home, I would speak to his wife and encourage her to keep down the amount of consumpation of carbohydrates that she fed to Mr. Roberts. Sometimes I would take a close look at the food she fed him and estimate how much carbohydrates he would take in. I checked his urine very often to get an idea how much sugar he was spilling, and also I frequently checked his blood pressure, because that was a perennial or chronic condition that he had, too.

Q Again, with regard to the column date of services that appears on that form, did you perform services for Mr. Roberts on those dates?

A Yes, I would stop off at his residence very early in the morning, and his wife was home, and I would converse with her about his diet and so on.

Q Did you perform all of the services that are listed there actually in Mr. Roberts' home?

mmp3 13 S.Feldman-direct

A Yes, in terms of checking him, checking his diet, checking his urine and providing medication where indicated.

Q For each of the services that are listed to Mr. Roberts there, they were provided in his home?

A Yes.

Q I want to put before you request for Medicaire payments submitted for Marion Paschier. Was Miss Paschier a patient of yours?

A Yes.

Q For what were you treating her?

A Well, she had a large number of illnesses. She still does. But outstanding among her illnesses were arteriosclerotic heart disease and disseminated arthritis due to trauma. If I may explain that further, this patient had had an auto accident 15 or 20 years previously. It was described as a hit-and-run accident. She was badly hurt. She had metal inserts into her legs, resulting in one leg being very much shorter than the other. She had arthritis of the lumbar spine due to the accident. She walked with a bad limp and complained of pain a great deal. In addition to that, she had had cataract operations of both her eyes, and her vision was failing her. She had swelling of the legs

due to her heart disease and her arthritis, and she had inter-occurent skin infections, and all those conditions I treated throughout those periods that I attended her.

Q And, again, looking on the form, it says date of service. Did you perform services for Marion Paschier on those dates?

A Yes. And what I would do was I would see her at her residence, which was not very far from my house, Harlem Valley, at the time, and I would see her and I would see her tenants, the Hubbards.

Q And at the time that you submitted this invoice did you believe that you were entitled to receive from Medicaire the amounts claimed?

A Yes.

Q I don't think I asked you that question with regard to invoices submitted to Mr. Roberts. So going back to that, did you believe at the time you submitted the Roberts invoices that you were entitled to receive the moneys that you claimed?

A Yes.

Q Let me now put before you an invoice dated 12-15-72. That relates to a Joseph Perrotta. Actually, before we go to that, you may recall Miss Paschier

mmp5 15 S.Feldman-direct

testified as to certain checks that she received. Looking at this form, this relates to services performed in 1972, and I note that there is a check-mark "I accept assignment."

What did that mean in 1972?

A That meant that I received a check with this statement.

Q Now, did your method of handling Miss Paschier's claims change in 1974 and 1975.

A Yes. At that time I was on an unassigned basis.

Q Will you explain to the jury what that means?

A That means that whatever checks Medicaire approves or the payments they approve are sent the patient, and my custom would be under those circumstances to have the patient endorse the check to me after she received it.

Q Were there ever times that you treated Miss Paschier and submitted requests for Medicaire payments when she did not turn those checks over to you?

A Well, there was an instance in 1974 and 1975 when the Hubbards again lived with Miss Paschier, and when they did I treated her again with her consent with the same conditions, and when she received the checks

she did not endorse them over to me, but I did not press the issue.

Q Now, I show you the invoices, invoices for Joseph Perrotta, one dated 12-15-72. Did you see Joseph Perrotta?

A Yes.

Q Would you tell us the condition for which you treated Mr. Perrotta?

A Yes. Mr. Perrotta originally had diabetes of many years' standing. He had moderate hypertension. He had a heart murmur. He had what is known as peripheral vascular disease, which is commonly seen in diabetics of long standing, that is, the circulation to his legs was impaired. He also had a degree of, shall I say, sexual impotency, and he had other inter-occurent problems, such as respiratory problems. I treated him for all these conditions beginning in 1967.

Q Looking, sir, at that form, did you render services to Mr. Perrotta on each of the dates set forth there?

A Yes.

Q Now, were each of those services performed in Mr. Perrotta's home?

A Yes, either examination, urinalysis, or

delivering medication to him. Sometimes if he were in bed, let us say, at a certain hour, and I was supposed to see him, rather than wake the man, we had an understanding that I would leave the medication in the seat of his car so as not to disturb him and to make sure that he had the medication when he was supposed to have it.

That medication consisted not only of diabinase, but he got medication for his peripheral vascular disease and for sexual impotency.

Q Now, I want to put before you a form for Margarita Ocasio. The date of the form was June 9, 1972. Would you tell the ladies and gentlemen of the jury what you were treating Mrs. Ocasio for?

A Well, Mrs. Ocasio had arterio-sclerotic heart disease and bronchial asthma, and when you have bronchial asthma of long duration it becomes what is known as emphysema, and so she had both these conditions, which interact upon each other. Arterio-sclerotic heart disease and emphysema interact on each other in such a way that they mutually disturb to a greater extent the basic pathology, that is, the emphysema worsens the heartdisease and the heart disease worsens the emphysema. So, generally speaking, these patients follow

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a downhill course.

In addition to that, Mrs. Ocasio hadwhat appeared to be a mental illness. She was not in normal contact with her environment. I speak Spanish and I could not converse with her to any extent. She did not appear to understand my instructions in Spanish, and she needed supervision of the medication because she seemed not to understand my instructions. So that in addition to prescribing medication for her, particularly medication for insomnia, which she had, which her daughter complained about, that the patient did not seem to know which was the proper time of day or night in which to sleep, I administered sedatives to this patient. But to make sure that it was safe to give these specific medications, I gave instructions to the daughter to be sure when she gave her the medication, to make sure which medication was which. And this went on for several months. The results appeared favorable. So that, actually, I could say that a lot of the treatments given to Mrs. Ocasio were rendered with the help, under my direction, of her daughter.

Q Did you ever see Mrs. Ocasio when her daughter was not present?

A Yes, there were other people in the house.

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There was a young man who was allegedly the husband of the daughter, and at times children.

Q Now, looking at that form, did you render services to Mrs. Ocasion on each of the dates set forth on that form?

A Yes.

Q And were all of these services rendered in the home?

A Yes. I never saw this patient at the office. She was not able to walk on the street, I don't believe, because of her confusion.

Q At the time you submitted that form did you believe you were entitled to receive the moneys set forth on that request for Medicaire payments?

A Yes.

Q I show you a request for Medicaire payments submitted on behalf of Maryette Salese and another submitted on behalf of Joseph Salese, and I ask you to look at those forms and tell me, is there any relationship between those two individuals?

A Yes. Mrs. Salese is the husband of Maryette Salese.

Q Did you render medical services to each of them?

A Yes.

Q Would you tell us what the conditions were for each of those people whom you were treating?

A Yes. Mr. Joseph Salese had a number of problems. He had arterio-sclerotic heart disease and hypertension, and he also was a chronically-depressed individual who had violent temperamental outbursts against his wife. These outbursts were so serious that at one time in the past Mr. Salese had knocked his wife's eye out. She was blind in that eye. And Mr. Salese had a habit of constantly disputing with his wife and sometimes raising his cane as though he would strike her. And the children were interested in somebody who could treat these people and keep them from hitting each other.

And so in order to deal with this problem of potential violence between them, I felt that treating them simultaneously would help resolve this problem, and I treated them for four years, five years, and, surely enough, we have come to some sort of trust between these two comtatants. Their family marital life has improved.

I gave Mr. Salese a wide variety of medications for his aches and pains, and these medications for his

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aches and pains also produce a mild euphoric reaction, which helps his irritability and depression and his insomnia.

There have been intercurrent illnesses. His heart sometimes goes into arrhythmia, and I treat that. He has had bad lungs, and I treat that.

And, on the other hand, Mrs. Salese is a diabetic of long duration who takes both insulin and orinase, and I provide her with both. She is too penny-pinching to actually go out and buy the medication herself. We have an understanding that she expects me to provide it for her. I found if I expected her to diet, she simply would not do it. So I give her the medication to be sure she has it.

In addition to that, she has got arthritis of the spine. She broke her leg once, and the ankle is deformed. Sometimes because of her diabetes, the skin on her toes breaks down, and I try to prevent that from developing into gangrene.

In addition to that, she has quite a temper, which I feel I treat successfully by interceding with her and her husband.

Q Now, looking at the forms in front of you, they indicate that services were performed by you for

mmp 22 S.Feldman-direct

Saleses on each of a number of days. Did you perform these services for them on the days set forth in the form?

A Yes.

Q Did you at the time you submitted that form believe you were entitled to collect the money listed in your charges?

A Yes.

Q I show you now a request for Medicaire payment for James Kriezis, dated 4-20-75. One last question before we leave the Salese form. I notice that in both those cases there is a box check that says "I do not accept assignment."

Who actually received the check that was mailed?

A The patients.

Q And what did they do with those checks?

A They endorsed it to me.

Q Now, I show you a form for James Kriezis. Would you tell the members of the jury what you were treating Mr. Kriezis for?

A Yes. Mr. Kriezis is a young man whom I have known since he was 18 years old. At age 18 he came to see me as a psychiatric patient. He was a school dropout. He had severe emotional problems with

regard to his father, whom he seemed to detest and, in addition to that, I uncovered homosexual tendencies in him. I treated him for this, and then he went into military service. He was a covert homosexual, meaning that he hid the tendency from the public.

He did not do too well in military service, and he developed what is called an osteochondromata of both knees affecting the bone near the kneejoints of the tibias and he was given appropriate medical treatment, surgical treatment for this in the Service, and discharged because of it after about a year.

While he was in the military service he got married, and then his wife got killed. His first wife got killed in an auto accident. After that he was discharged from Service, but then when he became a civilian again he remarried a young lady against my advice, partially unknown to me, and that is when his troubles seemed really to begin.

He had violent emotional problems with his wife, second wife. He fell on his job and fractured his patella near the same spot where he had the osteochondromata. As a result of that surgery he had an enormous kneejoint, four times the size of the other one, and he could not work. His emotional problems

mmp 24 S.Feldman-direct

with his wife multiplied. He finally could not work, and so he sought to get Social Security disability pension, which he eventually got.

The only reason I submitted these Medicaire claims was that he had become entitled to them after about two years of receiving his disability. And I treated him while he was at home and as a civilian for his emotional problems. Occasionally he needed medication for pain of his bad knees.

He had other problems. He was a very severe hypochondriac and very good evidence of that was when he was in the State of Washington he had severe constipation and they operated on him,and then they made an incision from the sternum to his testacle, which was enormous, just to treat the constipation, which left a huge scar on his belly which needed attention at times because he would get a great pain after that.

So this fellow had a multiplicity of complaints.

Finally, he broke with his wife, second wife, and he left for the State of Washington to get away from her.

Q Doctor, looking at that form, were those the

mmp 25 S.Feldman-direct

dates on which you performed services for Mr. Kriezis?

A Yes, while in Beacon.

Q You did perform services to Mr. Kriezis on those dates?

A Yes.

Q Was it your belief at the time that you were entitled to receive the payments claimed on that form?

A Yes.

Q Was that one in which the box is checked that you did not accept assignment?

A Yes.

Q In this instance the check went directly to Mr. Kriezis?

A Yes.

May I add that many of these payments I did not receive. Apparently, his wife in antagonism to the patient simply may have used them for her own purposes.

Q I show you a form dated 4-20-75 for Lillian Jacklyn. Was Lillian Jacklyn a patient of yours?

A Yes.

Q Is she still a patient of yours?

A Yes.

Q For what were you treating Miss Jacklyn at

the time that the form was submitted?

A She is a chronic lung patient, mostly in the form of bronchial asthmatic attacks, and she has variable hypertension. Right now she has developed cardiac aarhythmia in addition, and she has frequent infections of her mouth because of poor dental hygiene.

Q Cardiac arrhythmia?

A That is a condition where the heart beat is no longer regular.

Q Now, looking at that form, did you perform services for Miss Jacklyn on each of the dates set forth in that form?

A Yes.

Q Did you believe, sir, that you were entitled to receive payment from Medicaire at the time you submitted that form?

A Yes.

Q And, again, is that a situation where an assignment was not accepted and the check went directly to Miss Jacklyn?

A Yes.

Q She delivered the check to you? Is that correct?

A Correct.

mmp 27 S.Feldman-direct

Q I show you a form for Fred Penney, dated 4-19-75, and ask you, is Mr. Penney a patient of yours?

A Yes.

Q And for what were you treating Mr. Penney?

A Well, Mr. Penney has heart disease; he has variable high blood pressure; he is very weak in his gait, and for the past two years has been practically bedridden, except for going to the kitchen table, and he has periods of nosebleeds, usually due to his high blood pressure.

1 mmds 28 S. Feldman - direct

Q Did you perform services for Mr. Penney on each of the days set forth in this form?

A Yes, I did.

Q Did you at the time you submitted that form believe you were entitled to receive the payment reflected on that form?

A Yes, I did.

Q Is that a situation where you did not accept assignment and the check went directly to Mr. Penney?

A Yes.

Q He then turned the check over to you?

A Yes.

Q I show you an invoice for Mae Keane dated 4-25-74. Was Miss Keane a patient of yours?

Q And what were you treating her for?

A High blood pressure.

Q Did you render services to Miss Keane on each of the dates set forth in that form?

A Yes.

Q Did you at the time you submitted that form believe you were entitled to the amounts claimed on that form for medical services?

A Yes.

Q I show you a form for Edward Silvernail dated

2 mmds 29 S.Feldman - direct

4-25-74. Would you look at that form, please?

A Yes.

Q Were you treating Mr. Silvernail?

A Yes.

Q For what were you treating Mr. Silvernail?

A Well, at that particular time I treated him for depressive reaction in the sense that Mr. Silvernail was a very ill man physically, with a huge liver due to cirrhosis. He had a portacaval operation, which means re-arranging the blood vessels. He also vomited blood and he was a very severe diabetic, very weak physically, and as a result of his weakness he was always depressed, and I treated him for that.

Q Did you perform services for Mr. Silvernail on each of the dates set forth in the claim form?

A Yes.

Q At the time you submitted that request did you believe you were entitled to the amounts claimed?

A Yes.

Q Again, that is a situation in which the check went to Mr. Silvernail and he turned it over to you?

A Yes.

Q I show you a form submitted for a Jennie Gordon, dated 1-13-74 and ask you if Miss Gordon was a patient of

3 mmds 30 S. Feldman - direct

yours?

A Yes.

Q And for what were you treating her?

A She had a number of problems. She had arterial sclerotic heart disease with low blood pressure. Her blood pressure was rather low. She had a history of chronic stomach complaints, and she was very depressive, and also, she was a very strict vegetarian. And this was amazing, because I considered that as a result of her being a strict vegetarian that she had malnutrition, and she did. She was markedly underweight, didn't have much strength, and I gave her medication basically designed not only to treat the heart, but to improve her nutritional status.

Q Did you perform services for Miss Gordon on each of the days set forth in the form?

A Yes.

Q Did you believe at the time you submitted it that you entitled to the monies claimed?

A Yes.

Q Is that a situation where the check went to Miss Gordon and she signed it over to you?

A Yes.

Q Would you look at the next exhibit which I will put before you, which is a Medicare payment form for

4 mmds 31 S.Feldman - direct

Leo Berzety, dated 1-10-74. Is Mr. Berzety a patient of yours?

A Yes.

Q For what were you treating Mr. Berzety?

A He had a variety of conditions. He had chronic low blood pressure; he had a history of peptic ulcer which would, on occasion, flare up, and he had a severe anxiety reaction, which was chronic. He is a withdrawn individual who is afraid to go out of the house, who does not interact with people, and will hardly even make the effort to go out and shop for himself.

Q Did you treat Mr. Berzety on each of the dates set forth in that form?

A Yes.

Q At the time that you submitted the form did you believe you were entitled to the monies claimed there?

A Yes.

Q And, again, is this a situation where the check went to Mr. Berzety who signed it over to you?

A Correct.

Q I show you a form for Robert C. Schmidt, dated 1-10-74. Is Mr. Schmidt a patient of yours?

A Yes.

Q What are you treating him for?

5 mmds 32 S. Feldman - direct

A Mr. Schmidt had a carcinoma of the larynx for which he had a tracheotomy.

Q Where is that?

A A cancer of the voice box. He had a tracheotomy, and he now speaks through the trachea. It is hard to understand him. As a result of the tracheotomy he has a chronic bronchitis of both lungs. He gets frequent flare-up of his lungs, in terms of having infections with increased coughing and production of sputum, and he has to be warned to be very careful so that he does not catch pneumonia. He also has high blood pressure. He has angina, and if he walks a few feet or a block he gets pains in his chest and he has to stop.

In addition to that, he is an alcoholic and his drinking has to be curbed wherever possible. And so I treated him for this compendium, this conglomeration of conditions.

Q Did you perform services for Mr. Schmidt on each of the dates sets forth in the form?

A Yes.

Q Did you believe at the time you submitted the form that you had the right to the payments requested?

A Yes.

Q Did the checks actually go to Mr. Schmidt and did he sign them over to you?

6 mmds 33 S.Feldman - direct

A He did.

Q Now, I show you a form for Ethel Beaudoin dated 1-10-74. Was she a patient of yours?

A Yes.

Q And for what were you treating her, sir?

A She was the common-law wife of Robert Schmidt, and some years prior to her being covered by Medicare she had been shot by a shotgun fired by Mr. Schmidt accidentally, and at that time we took her in for emergency surgery and she recovered by some miracle and she was then well, fairly well, and did not require much medical care until the year of 1973. She developed arthritis at that time. I treated her for it. And, otherwise, she was free of complaints.

Q Did you render services to her on each of the dates set forth in this claim?

A Yes.

Q When you submitted the claim did you believe you had the right to request the payments set forth therein?

A Yes.

Q And, again, was that occasion where she got the check and turned it over to you?

A Correct.

Q I am going to show you a form for Albert Martinet. For what were you treating him, sir?

A He had an arterial sclerotic hypertensive heart disease and chronic bronchitis, in other words, he had a productive cough. He had a shortness of breath from it and he had poor heart tones.

Q Did you render services for him, sir, on each of the dates set forth on the claim?

A Yes, I remember giving him lots of service, especially during the time when he still worked. He had a job and he worked, and I attempted to treat him with the understanding that maybe some day when he retired we would see what happened.

Q Did you believe at the time you submitted this claim that you were entitled to the monies claimed?

A Yes.

Q I show you a form for a Fannie Eisner. Was Fannie Eisner a patient of yours?

A Not any longer.

Q Was she at the time this form was submitted?

A Yes.

Q What were you treating her for?

A She had hypertension and arthritis and depression, mainly taking the form of insomnia.

Q Did you render services to her on each of the dates set forth?

8 mmds 35 S.Feldman - direct

A Yes.

Q At the time you submitted that form did you believe that you were entitled to the payments requested?

A Yes.

Q I show you a form submitted by Mildred Horowitz, a form submitted by Charles Horowitz on behalf of Mildred Horowitz, and a form submitted on behalf of Charles Horowitz and ask you were these patients of yours?

A Yes.

Q Were they also related in some way to you or your family?

A Well, they were related only through marriage.

Q What was the nature of that relationship?

A They are aunt and uncle to my wife.

Q For what were you treating them, sir?

A They were both hypertensives, and, in addition to that, they had a variety of diseases, Mr. Horowitz having chronic prostate trouble, otitis externa, which is an infection of the external eardrums, some degree of nervousness at times, and Mildred Horowitz, in addition to having hypertension, had an arthritis of the ankle due to a fracture, old fracture, and also had arthritis in the form of chronic low back pain.

Q Now, I show you an invoice dated 7-28-71,

9 mmds 36 S.Feldman - direct

also of Mildred Horowitz and ask you with regard to the three invoices now in front of you, did you perform services for the Horowitzs on each of the dates set forth in the form?

A Yes.

Q And did you believe you were entitled to receive the payments requested at the time you submitted those forms?

A Yes.

Q I show you a form submitted for a woman named Betty Friedman. Was Betty Friedman a patient of yours?

A Yes.

Q What were you treating her for?

A I treated her for a combination of things, including arterial sclerotic heart disease and a depressive reaction. This woman was a chronic depressive. I know that on other previous occasions she told me she felt like she was going to commit suicide. This was when I knew her in Jamaica, New York. And I always felt a great deal of concern for her in terms that someday she might attempt it. And I, therefore, supplied her with large amounts of antidepressive medication.

Q Looking at the form again and the dates of services, did you perform services for her on each of those dates?

A Yes.

Q Now, the place of service indicates H, home. Where did she live?

A She lived in Rockaway Beach, New York. We had phone conversations, letters were exchanged, and I also supplied her with medication.

Q Did you visit her home on each of those dates?

A I never visited her home, no. She has come to me, but I have not actually entered her home. I corresponded with her, I have phoned her, I have had contact with her children and so forth, in an attempt to deal with her problem.

Q Did you believe you were entitled to the monies claimed on that form at the time you sumitted it?

A Yes.

Q I show you a form relating to Anna Vance.

A Yes.

Q Is she a patient of yours?

A Yes.

Q For what were you treating her, sir?

A YEs, she was a very sick woman with diabetes, arterial schlerotic heart disease, cataract, low back pain.

Q Did you perform services for her on each of the dates set forth on that form?

A Yes.

mmds 38 S.Feldman - direct

Q Which is dated July 3, 1971. At the time you submitted that form did you believe that you entitled to receive apyment, the payments claimed on that form?

A Yes.

Q I show you, sir, a form for Jennie Buckwald dated 7-29-71 and I ask, was Jennie Buckwald a patient of yours?

A Yes.

Q What did you treat her for?

A I treated her for diabetes mellitus, which she had for many years, and treated her for the most severe form of heart disease known, auricular fibrillation.

In all of the years I have treated this woman from 1968 on, this woman has always been known by me to have a fibrillator. In other words, there is absolutely no connection between the contraction of her auricle and the contraction of her ventricles, so that her heartbeat is totally irregular at all times, and such a person could drop dead instantaneously. By some miracle she has lived about eight years after I had been treating her, but I always treated her with the knowledge that this woman could die suddenly at any time.

Q And she is, in fact, dead?

A She is now dead.

mmds 39 S.Feldman - direct

Q Now, did you perform the services for her on each of the dates set forth on those forms?

A Yes, I did.

Q Did you believe you were entitled to the money claimed on those forms at the time you submitted them?

A Yes.

Q I show you, sir, three invoices for an individual named Leon Eilcox, one dated 7-27-71, one dated 12-29-71, and another dated 12-29-71, the last two having the same date.

Now, I put those before you, sir, and ask you, was Leon Wilcox a patient of yours?

A Yes.

Q For what conditions were you treating him?

A He had a glaucoma of a very severe degree that required lots of medication. He was so poor in his vision he could barely administer the drops himself, and he had to have a housekeeper or his own wife administer the eyedrops to him.

In addition to that, he had a bad spine of which he frequently complained, lumbo-sacral arthritis. He had a weak heart, and he also had from time to time episodes of gastritis, or stomach disorder.

Q Did you perform services for Mr. Wilcox on

each of the dates set forth in those forms?

A Yes.

Q Did you believe at the time you submitted those forms that you were entitled to the monies claimed?

A Yes.

Q Was there ever a time when Mr. Wilcox was in the hospital?

A Yes. I believe I was instrumental in sending him to the hospital.

Q When was that?

A I don't recall with precision the dates. I know it was after this 1971 date. I believe it was after his wife had died.

Q Now, did you visit him in the hospital?

A Yes, I did.

Q I believe I asked you, at the time you submitted each of those forms were you entitled to the monies claimed?

A Yes.

Q I show you a form for Paul Stamps dated October 22, 1972.

A Yes.

Q Was Paul Stamps a patient of yours?

A Yes.

Q And what were you treating Mr. Stamps for?

mmds 41 S.Feldman - direct

A I was treating him for hypertension and chronic alcoholism.

Q Did there ever come a time when Mr. Stamps spent any time at your home?

A Yes, on some occasion when he was so inebriated that he would need somone to look after him, there were occasions I took him into my own home to dry him out, and on one occasion I remember very well I thought the man was nearly dead. He had acute ethyl poisoning, to such a degree that he was barely moving. And as my wife also explained, under those circumstances I revived him.

Q How long did he spend at your home at that time?

A He may have spent in to the next day.

Q Now, at the time you submitted that form, those requests for Medicare payments, had you performed services for Mr. Stamps on each of those dates?

A Yes.

Q Did you believe at the time that you submitted that form that you were entitled to the payments?

A Yes.

Q Now, was there a time that Mr. Stamps was in the hospital?

A Yes.

Q And did you visit him in the hospital?

mmds 42 S.Feldman - direct

A Yes, I was interested in whether or not a man who was such an alcoholic might go into delirium tremens. It is a well known fact that when you have alcohol, become sick for other reasons as a result of intoxication, the nervous system when one becomes physically ill, one may go into delirium tremens, and I visited him on the suspicion that he might go into delirium tremens. He did not, however.

(Defendant's Exhibits A and B marked for Identification.)

Q I am going to put before you, Doctor, these last two exhibits that have been marked for identification as your Exhibits A and B. Would you look at those and tell me what they are?

A Yes, these are checks written by myself.

Q For what purpose?

A For obtaining medication and supplies.

Q For what purpose was this medication obtained?

A For the purpose of dispensing it to the patients.

Q The checks in Exhibit A are for 1971?

A Yes.

Q And those in Exhibit B are for 1972?

A Yes.

MR. MARTIN: At this time I would offer those checks in evidence.

mmds 43 S. Feldman - direct

MR. BATCHELDER: Government has no objection.

(Defendant's Exhibits A and B received in Evidence.)

Q Do you know approximately the amount these checks total?

A I have not totaled them, but I recall for the year 1970 I spent at least three thousand dollars in medications --

MR. BATCHELDER: Can we have that stricken. It is unresponsive.

THE COURT: Yes, we are not concerned with the year 1970.

MR. MARTIN: Your Honor, I can represent that I have checked out these amounts.

MR. BATCHELDER: I object to 1970.

THE COURT: The jury will disregard the statement about 1970.

MR. MARTIN: I have no further questions, your Honor.

MR. BATCHELDER: Your Honor, do you wish to take a recess?

THE COURT: Since we got such a late start and since I will leave at 12:30, I would like to go right through.

mmds 44 S.Feldman - cross

CROSS-EXAMINATION

BY MS. NEUGARTEN:

Q Dr. Feldman, my name is Rhea Neugarten, and I am an Assistant United States Attorney.

Your lawyer showed you, I believe, some of the invoices as to Jule Adams. I would like to show you some more invoices, as well as those.

First, as to documents marked 8 and received in evidence as such, is that your signature?

A This?

Q Yes.

A Yes.

Q And is it correct that you certified that on August 27, 28, 29, 30 and 31 you rendered services to Miss Adams at her home and that those services were diagnostic checkups and the administration of medication?

A I provided services, yes.

Q Did you certify that you provided those services on those dates in her home?

A Yes, I provided those services.

THE COURT: And certified to that effect? Is that correct?

A Well, it says the physician certifies that the services were rendered by him or under his personal direction.

mmds 45 S.Feldman - cross

Q So the answer to my question is what?

A YEs.

Q Now, you also certified, did you not, that on September 1 and September 2, 1971, in Miss Adams' home you rendered what you describe as the same services, that is, diagnostic checkups and the administration of medication?

A That is correct.

Q And you, in fact, rendered those services in those places at that time?

A In terms of providing medication, in terms of giving her medical supplies.

MS. NEUGARTEN: My question calls for a yes or no.

MR. MARTIN: The answer is responsive.

THE COURT: I take it he has answered yes, in effect.

Q Directing your attention to Government's Exhibit 10, is this your signature, Dr. Feldman?

A Yes.

Q Is it correct that you certified that on December 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th and 14th of 1971 in Mrs. Adams' home you performed diagnostic checkups and the administration of antibiotics and antitussitives --

THE WITNESS: Antitussives, which means a product designed to combat coughing.

Q -- is it correct that you did so?

A I provided those services for those conditions.

Q And you so certified?

A I did so certify.

Q Now, directing your attention to Government's Exhibit 11, is that your signature, Dr. Feldman?

A Yes.

Q Is it correct that on December 22, 23 and 25, that is, Christmas Day, at Miss Adams' home you rendered diagnostic checkups and the administration of medication?

A May I refer to the previous one for the sake of continuity?

MS. NEUGARTEN: Would you please direct the witness to answer?

THE COURT: The question is whether he rendered those services, not whether he certified.

MS. NEUGARTEN: That he certified.

THE COURT: That is not what you asked.

MS. NEUGARTEN: That is what I meant to ask.

THE COURT: Did you certify?

THE WITNESS: I would like to refer to the previous document.

mmds 47 S.Feldman - cross

THE COURT: We are talking about whether you certified.

THE WITNESS: Yes, but I would request your permission to refer to the previous document, because the previous document refers to respiratory infection.

Q We are only talking about whether you certified on this form, not what you actually rendered.

A Yes.

Q Now, directing your attention to Government's Exhibit 12, is that your signature, Dr. Feldman?

A Yes.

Q Is it correct that you certified that on January 1, 3, 5, 7, 9, 11, 13, 15, 17 and 19 of 1972 in Miss Adams' home you rendered diagnostic checkups and the administration of medication?

A Yes. I have listed here a diagnosis of phlebitis, and under those circumstances I would provide her with medication for such a condition.

THE COURT: The question is what you certified, not what you did.

THE WITNESS: Yes.

Q Now, directing your attention to Government's Exhibit 13, is that your signature, Dr. Feldman?

A Yes.

Q Is it correct that you certified that on January 21, 24, 27 and 31, and on February 4, 7, 10 and 13 of 1972 in Miss Adams' home you rendered diagnostic checkups and the administration of medication?

A Yes, for those particular conditions.

Q And did you perform those services?

A Yes.

Q Now, directing your attention to Government's Exhibit 14, is that your signature, Dr. Feldman?

A Yes.

Q And is it correct that you certified that on February 15, 18, 21, 24 and 28, as well as March 2, 5, 8 and 13 of 1972 in Miss Adams' home you rendered diagnostic checkups and the administration of medication?

A Yes.

Q Did you perform those services?

A Yes.

THE COURT: Ask him whether or not his testimony with respect to all of the other exhibits would be the same, that is, on the dates indicated he performed the services. Wouldn't it be a saving of time?

MS. NEUGARTEN: Those particular services in a particular place?

THE WITNESS: May I qualify that to some extent?

My qualification would be that this woman had --

THE COURT: The question is what you certified in those documents. Is it correct that you certified that on the dates indicated you performed the services indicated in the places indicated?

THE WITNESS: Yes.

THE COURT: That is all you are trying to get out of this examination?

MS. NEUGARTEN: There is also a second question.

Q Is it not correct that you performed those services on the dates indicated in those documents?

A Services, yes.

Q I am not sure that was responsive to my question. The services listed on the document?

A Yes.

Q Now, directing your attention to a series of claims as to John Roberts --

MS. NEUGARTEN: Under your Honor's suggestion, would your Honor prefer that I go through them, one or two individually, and then the rest?

THE COURT: I think we can assume that his testimony would be the same.

And you can either confirm or correct us on that, Doctor. You have been through all of those forms in

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the folder recently. On each of the forms did you certify that you performed the services indicated on the dates indicated and in the places indicated?

A Yes.

THE COURT: And did you perform those services on those dates in those places?

THE WITNESS: Yes, sir.

MS. NEUGARTEN: Just to make the record clear, these forms that I am presenting to him now are more forms than were shown to him by his counsel. They are all, however, as to John Roberts.

THE COURT: You better take time to look through them.

Q If you would like to go through each of these, and then I will read their numbers into the record after you have read through them.

A May I also ask, there was a time when Mr. Roberts was no longer covered by Medicare, and I submitted forms for payment that were not honored because he lacked eligibility.

MS. NEUGARTEN: I ask that that answer or remark be stricken as not responsive to my pending question or to anything.

THE COURT: Well, we are trying to shorten

this up. I dont think it is relevant to the present inquiry, so I don't think the jury will need to consider it. He was really asking a question as to whether the group of forms you handed him included any forms for a period after Mr. Roberts had lost eligibility.

MS. NEUGARTEN: Well, as to Government's Exhibit 34 --

THE COURT: Let us shorten it this way. When did Mr. Roberts lose eligibility?

THE WITNESS: I believe some time in 1972, for reasons not understood by me.

MS. NEUGARTEN: The majority of the documents are as to 1971. However, Exhibit 50 is for January of 1972; Exhibit 51 is for January of 1972; Exhibit 52 is for February of 1972; Exhibit 53 is for March of 1972; Exhibit 54 is for March of 1972.

(Continued on next page.)

THE COURT: Do you represent that the checks were actually sent either to the doctor or to the patient for each of those invoices?

MS. NEUGARTEN: I am not prepared to represent that, your Honor.

THE COURT: Well, you better check. You check the 1972 invoices, Doctor, to see whether or not they were before or after Mr.Roberts lost eligibility.

THE WITNESS: I could not say, your Honor, whether these were ever paid in the sense that he was still eligible. It may be as early as March and April of 1972 when he was no longer eligible.

Q Did you, nonetheless, certify on those claim forms that you rendered these particular treatments at these particular times and these particular places?

A Yes.

Q And that is true as to all of the exhibits?

MS. NEUGARTEN: Your Honor, to make the record clear, perhaps I should just read the numbers in the record that I have shown to him, unless your Honor will accept my representation that I believe them to be all of the documents received in evidence as to John Roberts.

THE COURT: It is not I who need to accept

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it, but Mr. Martin. He can check them at his leisure to make sure.

MR. MARTIN: I would be happy to accept Ms. Neugarten's representation.

THE COURT: I might instruct the jury, this question of eligibility is not something you must consider at all. The defendant is accused of submitting false claims for visits that he did not make and for services he did not render. It makes no difference whether these claims were paid or not. The offense that he is charged with is submission of false claims or the devising of a scheme to defraud, which includes making false claims or causing them to be made.

Q Now, Dr. Feldman, there are certain claims as to Margarita Ocasio, Exhibit 166. Following his Honor's suggestion, would you look through those. These are more than the documents that your counsel supplied to you earlier in your testimony. See if your answer to the question would be the same as it has otherwise been.

A Yes.

Q So then it is correct that you certify that you rendered the particular treatments listed in the particular places on the particular days?

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A Yes, in addition to which may I state that the services were personally rendered by myself or under my personal direction.

Q And, in fact, you did perform those services on those dates in those places?

A Yes, under my personal direction.

Q Showing you claim forms as to Joseph Perrotta -- and again, these are more claims than the ones which counsel referred to in your testimony earlier -- will you look through them briefly, please?

A Yes.

Q You also performed those services on the places indicated and the services were those indicated on the forms?

A Yes.

Q There is an additional Perrotta form. I believe this is the one that your counsel showed you earlier?

A Yes.

Q And your answer to the questions as to this form, that is, Exhibit 174, is the same?

A Yes.

MS. NEUGARTEN: Now, your Honor, I believe the record is incomplete as to Margarita Ocasio.

I didn't indicate that these were all of the documents received in evidence as to Margarita Ocasio. If Mr. Martin will so stipulate --

MR. MARTIN: I will accept your representation.

Q And the same is also true as to Margarita Ocasio with the additional claim date 8-19-71, which I will show him in another context.

THE COURT: Will you accept that representation, Mr. Martin?

MR. MARTIN: Absolutely.

Q Now, showing you Exhibit 117 as to Jenny Gordon, do you see that the services described are medical care, diagnostic checkups, administration of medication and psychotherapy?

A Yes.

Q And that you rendered all of those services on each of those dates?

A Yes.

Q And you certified that you rendered all of those services on each of those days in Jennie Gordon's home?

A Yes.

Q Showing you Exhibit 94 for identification,

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a form as to Leo Berzety, you see that the place of service in every case is home and the nature of the service is the administration of medication and psychotherapy, and you certify that you rendered each of those services on the dates listed on the form in Mr. Berzety's home?

A Absolutely.

Q And you did so render the service?

A I did so rendere the service.

Q I show you Government's Exhibit 119. Is that your signature, Dr. Feldman?

A That is.

Q You see that the service is diagnostic check-ups, administration of medication and physiotherapy?

A Yes, that is correct.

Q And you certified that you did render those services on each of the dates listed on the form in Ethel Beaudoin's home?

A Yes.

Q Showing you Exhibit 115, you see that services, medical treatments and administration of medication as to three dates, July 1, 15 and 30, and as to the remaining dates, it is simple medical treatment?

A Yes.

Q And you certified that you rendered the services as described on the form in Mae Keane's home on the dates as described on the phone?

A Yes.

Q You did so render them?

A Yes.

Q Showing you Government's Exhibit 116, a claim as to Edward Silvernail, you see that the service is psychotherapy?

A That is correct.

Q And you certified that you rendered psychotherapy on each of the dates listed in Mr. Silvernail's home?

A Absolutely.

Q And you did so render those services?

A I did so render those services.

Q Now, showing you claims as to Leon Wilcox, there are three claims here, Exhibits 108, 106 and 107. Again, following his Honor's suggestion of consolidating the question, would you look through the three, please?

A Yes.

Q Does your signature appear on each of them, Dr. Feldman?

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A Yes, it does.

Q And did you certify on each of them that you rendered the services as so described on each in Mr. Wilcox's home and that you did it on the dates in question?

A Yes.

Q And you did render the services in Mr. Wilcox's home on the dates in question?

A Absolutely.

Q Showing you forms as to false stamps and, again, there is one which I believe your counsel showed you, is that your signature, Dr. Feldman?

A Yes.

Q You see the place of service is home and the nature of service is diagnostic checkups and administration of medication?

A Yes.

Q And you certified that you rendered those services on the dates specified in Mr. Stamps' home?

A I believe that on this occasion he may have been an in-patient in the hospital. Nonetheless, I went to his home, procured the necessary papers for his hospital certification, checked upon his Workmen's Compensation status --

MS. NEUGARTEN: I ask that that part of the answer be stricken as not responsive to the question. The question is, did he certify?

THE WITNESS: Yes, I observed him mentally --

THE COURT: The question is, is what you certified on the form?

THE WITNESS: Yes.

Q Now, Dr. Feldman, showing you claim forms as to a man named Thomas Petty. These were not referred to in your direct examination. Will you please review them?

A Yes.

Q And again following his Honor's suggestion of consolidating the question, is that your signature on each of those forms, that is, did you certify on each of those forms that you rendered the services described on each form and the place described on the form, which, I believe, is Mr. Petty's home, on the dates described in the form?

A His domicile.

Q I believe it says home.

A I regard home and domicile as synonymous.

Q But, in any event, you certified you rendered them at his domicile?

A Yes.

Q And, in fact, you rendered those services as described in those forms on those dates in his domicile?

A Correct.

Q And those dates, just so we are clear, are December 19, 26 and 30, 1974, November 14, 19, 21 and 26, 1974, November 4, 1974 --

A November 7 --

Q You are correct, November 7, October 2, 3, 4, 5, 1974, December 1 and 2, 1974, December 5, 8, 12, and 15, 1974, January 3, 5, 9, 16, 13, 26 and 30, 1975?

A That is correct.

Q February 6, 13, 20, 27, 1975?

A That is correct.

Q March 6, 13, 14, 15, 1975?

A That is correct.

MS. NEUGARTEN: Now, your Honor, these documents have previously been marked for identification and I will represent to Mr. Martin that these are all of the Medicaire forms as to Mr. Petty which have previously been marked for identification in the testimony of Mr. Favino.

Would you like me to read the exhibit numbers into the record?

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MR. MARTIN: No.

Q Now, showing you certified Medicaid forms as distinguished from Medicaire forms as to Mr. Petty, would you look through them briefly?

A Yes. This one applies to Mr. Petty. There are other names.

Q I believe you will find -- and please look -- reference to Mr. Petty on each of the exhibits?

A Yes, there are two references to Mr. Petty.

Q That is on Exhibit 277, 278?

A Yes.

Q Those are all references to Petty?

A Yes.

Q And on Exhibit 279 there are certain references to Mr. Petty?

A Yes.

Q Exhibit 280, there are a number of references as to Mr. Petty?

A Yes.

Q 281, those are as to Mr. Petty?

A Yes.

Q 282?

A Yes.

Q All as to Mr. Petty?

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A Yes.

Q 283, all as to Mr. Petty?

A Yes.

Q And your signature appears on all those forms?

A Yes.

Q And on each of them you certified as to Mr. Petty, and we are only asking you as to Mr. Petty, you certified that you performed those services?

A At his domicile.

Q You did perform those services as described on those forms?

A Yes.

MS. NEUGARTEN: I will represent that all these Medicaire forms are forms as to Mr. Petty which were described in the testimony of Mrs. Greco. Will you accept that representation?

MR. MARTIN: I certainly will.

Q Now, showing you certified Medicaire claims as to various patients, and because the number of patients are large it would be useful just to read the exhibit numbers into the record: Exhibit 185, 141, 138, 193, 194, 188, 98, 139, 185, 186and 187, would you look through those briefly?

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A These are different patients?

Q Yes, an assortment of patients.

A Yes.

Q Does your signature appear on each of those claims, Dr. Feldman?

A Yes.

Q And you certified that you rendered each of the services described on each of the dates described to the patients described?

A Absolutely.

Q And you performed each of those services in each of those places on each of those dates?

A Yes.

MR. MARTIN: May I see these forms?

Q Now, again, these are claim forms dealing with a variety of patients, and I shall probably read the exhibit numbers in for that reason: Exhibit 215-A, 14-A, 216-A, 213-A, 214-A, 211-A, 220, 217, 219, 218, 166, 213, 212-A, 77 and 216.

Would you look through those claim forms, Dr. Feldman?

A Yes.

Q Now, does your signature appear on each of those forms, Dr. Feldman?

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A Yes.

Q And did you certify that you rendered the services described on the form,on the dates described on the form,in the place described on the form, to the patient described on the form?

A Yes.

Q And you, in fact, rendered each of those services in accordance with the form?

A Yes.

Q And, again, a set of claims as to various patients. I will read the numbers into the record: Exhibit 159, 200, 208, 201, 174, 207, 206, 199, 202, 212, Medicaid Form 211, 204, 205, 203, 209, 89, 210, and Medicaid Form 214 and 213.

Will you please look through those, Dr. Feldman?

A Yes.

Q Does your signature appear on each of those forms, Dr. Feldman?

A Yes.

Q And you certifie_ that you rendered the services described on each form on the date described on each form to the patient described on each form?

A Yes, I recall many of these patients, not

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every single one. I don't recall Santa Hernandez.

Q The question is, did you certify you rendered each of those services?

A I did, but I don't recall Santa Hernandez.

Q Except as to her, would your testimony be that you performed each of those services at the places listed on the invoices and the dates listed on the invoices?

A Yes. May I rserve as to Santa Hernandez.

Q Yes, I will pull it out.

A I don't clearly recall Santa Hernandez.

Q As to her. But you did distinctly recall as to the others?

A Yes.

Q You recall that a while ago you looked at some forms as to Thomas Petty?

A Yes.

Q Thomas Petty was in the Dutchess County Jail, was he not, between October 5, 1974, and March of 1975?

A That is correct.

Q So you treated him many, many times in the jail? Is that correct?

A That is correct.

Q Do you recall testifying on April 27, 1976,

at Thomas Petty's trial?

A Yes, I did.

Q And at the time you so testified you swore to tell the truth, the whole truth and nothing but the truth?

A Yes, I did.

Q And this morning you were also given a similar oath?

A Yes.

Q And on April 27, 1976, do you recall being asked the following questions by Assistant District Attorney Dolan and giving the following answers, page 7:

"Q On how many occasions did you visit him at the Dutchess County Jail?

"A Approximately twice.

"Q Was the first one November 7th, 1974?

"A It might have been.

"Q Is that what the jail record would show?

"A They might.

"Q You're required to sign in: isn't that correct?

"A I believe so."

Do you recall giving that testimony?

A Yes.

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Q And do you recall that it referred to Thomas Petty?

A Yes, it referred to him.

Q And a while later on that same day while you were still on the witness stand and under oath you were asked certain questions about Medicaid vouchers, were you not?

A Yes.

Q Do you recall being asked these questions and giving these answers, page 23 --

MR. MARTIN: Your Honor, may we approach the bench?

(At the bench.)

MR. MARTIN: I realize, your Honor, the situation has changed dramatically since the pre-trial rulings. This is similar act testimony. Your Honor still does have some discretion to exclude it, and I would ask your Honor to exercise the discretion.

MS. NEUGARTEN: It is a test of credibility. He has taken the stand in his own defense.

MR. BATCHELDER: He took an oath to tell the truth and he has dramatically contradicted himself under oath. A similar act has nothing to do with it.

THE COURT: All right.

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(In open court.)

Q "Q And, Doctor, would you like to count the number of entries for November and December with respect to Thomas Petty?

"A There are fourteen.

"Q Fourteen, not sixteen?

"A There are fourteen.

"Q All right. Next to each one of those fourteen entries is the letter 'h' present?

"A Yes.

"Q Even though the defendant Petty was in jail throughout that period?

"A He was in residence. That was his residence.

"Q How many times did you tell us before, you visited him in jail?

"A Several times, but on other occasions.

"Q Doctor, I believe your testimony was once or twice, was it not?

"A Yes, it may have been.

"Q Are thirteen of those vouchers fraudulent?

"A No.

"Q You saw him all fourteen times?

"A I brought him to him various and sundry items

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for his use, for his use.

Q "But you didn't bill the local Medicaid people for twelve visits you never made, did you?

"A No, these were ... I visited ... I left things for his use with instructions, such as his uh ... He received uh checks uh from the uh Social Security which I uh took to him.

"Q How did you get his checks?

"A They were left at the house, and what I did was I delivered them for his use, his personal use, to the uh, D.C. Jail, and other items that he needed.

"Q But yet you billed Medicaid for medical treatment on fourteen different occasions when, by your own testimony this morning, you saw him at the Jail once or twice?

"A Well, I felt that they uh, he needed these items. They should be in his possession, so I delivered them to him.

"Q And charged Medicaid a fee for the purpose of taking his Social Security checks to the jail.

"A Well, that was ... That was for his benefit, yes. That was for his benefit."

Do you recall being asked those questions and giving those answers?

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A Yes.

Q Now, before you took the stand today did you swear to tell the truth?

A Yes.

Q And back in April when you testified ware you also under oath?

A Yes.

Q And in April you testified that you only took Mr. Petty supplies and Social Security checks, didnt you?

A May I enlarge upon that now?

MS. NEUGARTEN: There is a pending question and, your Honor, I would ask that you direct him to respond to the question.

THE COURT: Read the question.

(Question read.)

A I testified at that time, yes.

Q But here you testified that you actually treated him at his domicile on dates when he was in jail?

A I rendered services to him during that period in terms of collaborating with him --

MS. NEUGARTEN: The question calls for a yes or no answer.

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THE COURT: Did you so testify?

THE WITNESS: I testified at that time, yes.

THE COURT: No, testified here today that you rendered services for him on each of the dates indicated in the exhibit at his domicile?

THE WITNESS: Yes, and may I expland upon that answer at this time?

THE COURT: All right. Proceed.

THE WITNESS: I did collaborate with the Public Defender's Office so that this individual would have the proper, appropriate legal defense when his case came up to trial. I also took cautious note of his rather serious epileptic condition when I did visit him at the jail and made every representation to the authorities at the jail to be sure that he got sufficient medication for his epilepsy, which was in very bad shape at that time.

Q Dr. Feldman, the various dates that you certified that you treated Mr. Petty in jail, did you treat him medically or did you perform other services, taking in supplies and checks?

A I gave him services.

THE COURT: You mean messenger services?

THE WITNESS: No, I gave him services aimed

at assuring him that he would receive the proper medical care from the authorities at the jail.

Q Now, Dr. Feldman, in 1971 about how much in total did you receive from Medicaire?

A I have no idea.

Q None whatsoever?

A I have no exact figure to give you.

Q What is your general recollection?

A General recollection, it might be in the area of $15,000 to $20,000.

Q And in 1972, about how much did you receive yourself personally in checks for treating Medicaire patients?

A It might be in the neighborhood of $20,000 for the entire year.

Q Isn't it a fact that in 1973 you were disqualified from receiving any further Medicaire checks on an assigned basis?

MR. MARTIN: I object to that. It is irrelevant as to what somebody else did.

MS. NEUGARTEN: There is testimony this morning that in 1974 and 1975 his patients received certain checks and that they were signed over to him, and I believe that Mr. Martin opened up that area, and

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I should be allowed to pursue it.

MR. MARTIN: May we approach the bench?

THE COURT: Yes, please.

(At the bench.)

MR. MARTIN: The door is opened, but not for all purposes. I asked those questions simply to indicate that the patients were totally familiar with what he was receiving. The fact that there was an investigation and what that investigation involved it seems to me is not relevant.

THE COURT: Well, he did say that with respect to a number of patients, the check went to the patient and then later was assigned over to him. Isn't it relevant that at the time in question he was disqualified from receiving any payments on an assigned basis?

MR.MARTIN: I don't see why that is relevant. The patient knew what he was getting.

THE COURT: Isn't there an inference that the check was sent only to the patient only because he was disqualified to receive it directly? You had a purpose in bringing out that the check went to the patient, and I think the government can rebut the inference that this was a voluntary act on the doctor's

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part and so that he had no alternative except than to have the check sent to the patient. If you had not opened up that door, you are quite right, this would be testimony of what happened in some administrative proceeding you know nothing about.

MR. MARTIN: We don't get into the details of that investigation.

THE COURT: Absolutely not, just the fact that he did not accept the assignment.

(In open court.)

THE COURT: Read the question.

(Question read.)

A That is correct.

Q Before you were so disqualified, how often did you personally receive checks for Medicaire for treatments rendered to your patients?

A In total?

Q In 1973, total, to the best of your recollection?

A In 1973?

Q Before your disqualification.

A That would only be for approximately a three-month period, the first quarter of 1973.

Q About how much was that?

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A Perhaps it might have been a thousand or two thousand. I can't say with accuracy.

Q Is it correct that in 1974 you were still disqualified from receiving checks on an assigned basis directly from Medicaire?

A That is true.

Q Is it correct that in 1975 you were still so disqualified?

A I did not appeal their decision. I remained disqualified.

Q About how much in 1974 while you were disqualified did you receive from patients who had received checks from Medicaire and then signed them over to you?

A Possibly $5000.

Q And in 1975 about how much did you receive from patients who had received checks and then signed them over to you?

A Possibly five to seven thousand.

Q And that is to the best of your recollection?

A That is the gross figure.

THE COURT: Is this a good stopping place?

MS. NEUGARTEN: Yes.

THE COURT: I am sorry I am going to have to leave, so we are going to break now and stand in recess

until 2 o'clock tomorrow afternoon. Don't discuss the case in the meantime with your fellow jurors or anyone else.

(Jury excused.)

MS. NEUGARTEN: May we approach the bench?

THE COURT: Yes.

MS. NEUGARTEN: Just for your Honor's planning, we will have more cross-examination.

THE COURT: How much more do you anticipate?

MS. NEUGARTEN: Probably about another hour, and we would also, in view of this morning's testimony, intend to put in a fairly brief rebuttal case.

THE COURT: Maybe we can get that in on Thursday afternoon. That means we will have the summations and charge on Monday. On Friday I have pretrial.

(Adjourned to November 4, 1976, at 2 o'clock p.m.)

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United States of America,

-vs- 76 Cr. 44

Seymour C. Feldman

New York, New York
November 4,1976--2:20 p.m.

(Jury not present.)

THE COURT: We have been waiting for Juror No.11, Mr. Sill, who still has not appeared. What do you think we ought to do about it?

MR. BATCHELDER: Give him another eight minutes, your Honor, about 2:30 or so, unless Mr. Martin has some feelings.

MR. MARTIN: I have a feeling that I don't want to see Mr. Sill discharged from the jury, your Honor.

THE COURT: Well, I don't want to see him discharged, either, because that would leave us with only one alternate. There is a weekend ahead of us, and I am afraid we might suffer a little attrition over the weekend. So I will wait another eight minutes and then we will see what we will do at that time. We have called his home and there is no answer, so he may be on the way -- he may be here already.

THE CLERK: There is a knock on the door.

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He has just arrived, your Honor.

(Jury present)

S E Y M O U R C. F E L D M A N, resumed.

THE COURT: Good afternoon. I am going to urge you to try to be a little ahead of time so we won't be delayed. If one person is late, it means not only all the other jurors, but counsel and everybody else have to wait. So allow a little leeway, don't cut it too fine, because you always run into unpredictable delays on the subway or other means of transportation.

CROSS-EXAMINATION CONTINUED

BY MS. NEUGARTEN:

Q You testified you had a special room in your house which you used as an office? Is that correct?

A Let me specify --

Q Would you just answer my question, please.

THE COURT: Did you so testify?

THE WITNESS: I have not testified, your Honor, on that matter.

THE COURT: You did say you had a room in the house or a place in the house?

THE WITNESS: Yes, I built an office in 1968 which was completed in 1969, yes.

Q And that is in your home?

A It is attached to my home, yes.

Q Now, what power microscope do you have or did you have in your office in 1971?

A I did not use a microscrope at that time.

Q When did you come to have a microscope in your office?

A I did not use one in the sense that I did any microscopy. In the case of a microscope, a patient would be sent to the laboratory or hospital.

Q So since 1971 you have not had a microscrope in your office?

A No.

Q And did you have a centrifuge in your office in 1971?

A Nc.

Q Have you had one since then?

A No.

Q Do you have a cardiograph in your office?

A No, I would send patients to the local hospital for that purpose.

Q You have not had a cardiograph since 1971?

A I have not possessed one.

Q And what about an X-ray machine?

A I did not possess one.

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Q What about a diathermy machine?

A I had materials for that purpose, for heat treatments. I had a lamp.

Q What kind of materials do you have?

A A lamp, infra-red lamp.

Q What electrical equipment did you have in your office?

THE COURT: That is too broad. It might include light bulbs.

A I did have a hylfractor for the removal of skin lesions and lacerations.

Q How did you determine the specific gravity of urine samples which you took?

A I tested urine mainly the chemistry, that is, protein.

Q I believe the question was, how did you determine the specific gravity.

THE COURT: Did you have any means for determining specific gravity?

THE WITNESS: No, I did not. That I would send tothe local hospital in case of need.

Q To what hospital did you send your urine samples?

A Depending on the location of the patient's

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home, I would send that patient to the nearest available hospital to that patient.

Q Do you have receipts from those hospitals of urinalysis with you?

A No.

Q How was it generally known in medical circles that you had a medical practice in Dutchess County, if you know?

MR. MARTIN: Objection. People have been here to testify that he treated them. Whether it was known to others is irrelevant.

THE COURT: You may answer. Do you have any idea whether it was generally known you had a medical practice?

THE WITNESS: Yes.

THE COURT: That does not answer the question. That you did have a practice or didn't?

THE WITNESS: I did.

Q And representatives of drug companies periodically came around and visited with you, did they not?

A Yes, at the hospital where I worked and sometimes at home.

Q They gave you samples to acquaint you with their medications? Is that not correct?

6 mmds 82 S.Feldman - cross

A Yes, they did, up to 1973, when sampling on a general basis was discontinued.

Q Until then they frequently gave you samples? Is that correct?

A Yes.

Q Now, isn't it good medical practice to give periodic EKG's to patients with serious heart disease?

MR. MARTIN: Objection, your Honor, again to the relevance. The question here was whether these services were rendered. This is not a case in which the doctor's competence is on trial.

THE COURT: I think the question is relevant. I think the expression EKG ought to be clarified for the benefit of the Court and [illegible]ty.

Q To give periodical electrocardiograms to patients?

A That is not necessarily so.

Q Did you have occasion periodically to give EKG's or electrocardiograms to your patients?

A Yes, in some instances I sent patients for EKG's.

Q And where did you retain the tracing of those EKG's?

A I retained them, if I got a copy, in my own

7 mmds 83 S.Feldman - cross

records.

Q Didn't you tell Mr. DeRosa that you threw out the EKG tracings that you had? Did you tell him that in 1973?

A I don't recall.

Q Isn't it a fact that you told Mr. DeRosa in 1973 that you would spend between 15 minutes and an hour with each of your patients as you went around and made your rounds?

A Yes.

Q And that is a fact, is it not?

A Yes.

Q You did spend that amount of time with your patients?

A Yes, depending upon the seriousness of the situation.

Q And you told Mr. DeRosa you kept tally sheets of your visits as you went around?

A Yes, I would have scrap papers with notations of changes, telephone numbers to call, things of that sort, but those were later disposed of.

Q So you don't have those tally sheets now?

A Those were merely memorandums to myself.

Q I believe there is a pending question. Do you have those tally sheets now?

A I do not have them now.

Q Showing you copies of what has been marked as Defendant's Exhibit A for Identification, I believe these are checks as to the year 1971? Is that correct?

A Yes.

Q And you compiled those at your counsel's request? Is that correct?

A Yes, these were in my records which I kept for tax purposes, yes.

Q Do you have any other checks dealing with drug stores, pharmacies, for 1971, other than these that you provided to your counsel and that your counsel has marked as an exhibit?

A These seem to run through the whole year.

Q And you kept these record for tax purposes so you could take deductions?

A Yes.

Q So you were careful and complete about the way you kept your records?

A Yes.

Q These records, these checks don't indicate for what patient the drug was purchased, do they?

A No, they do not. They represent the sum total paid to the pharmacy for a collection of medications and

supplies.

Q Do youhave any receipts or records which do indicate for what patients these pharmaceuticals were purchased?

A No, I did not customarily purchase medication for any one particular patient at one time.

Q Now, showing you checks which have been marked as Defendant's Exhibit B for Identification, those are checks that you wrote to drug stores for the year 1972? Is that correct?

A That is correct.

Q These were compiled at the request of your counsel?

A Yes.

Q And they were taken from your tax records?

A Yes.

Q And you were careful?

A Yes.

Q These are all the checks you have for pharmacies for the year 1972?

A I believe so.

Q Do you have any receipts that indicate for what patients these drugs were purchased in 1972?

A There would be no indication for which patient

10 mmds 86 S.Feldman - cross

which medication was purchased specifically in most cases, because I used similar medications for groups of patients. So that whatever medication the patient would receive would come out of the total supply of that particular medication.

MS. NEUGARTEN: I move to strike most of that answer as not responsive to the question. It calls for a yes or no.

MR. MARTIN: I think it is responsive.

THE COURT: Read the answer.

(Answer read.)

THE COURT: The answer is no, then.

Q Isn't it a fact that there came a time when certain drug stores were refusing to fill prescriptions that you wrote for certain narcotic drugs?

MR. MARTIN: Objection, your Honor. May we approach the bench?

THE COURT: Yes, please.

(At the bench.)

THE COURT: What is the relevance?

MS. MEUGARTEN: I believe he is putting in the drug receipts as an indication that these were valid services rendered or something of that nature, and I think it shows the validity or invalidity of the invoices.

THE COURT: I don't follow you. And the fact

that he was shut off from buying narcotic drugs would tend to show just the opposite. When was he shut off?

MR. BATCHELDER: 1974.

MS. NEUGARTEN: During the period of the indictment.

THE COURT: Well, how do we know that the narcotic drugs were not intended for these patients in the years 1971 and 1972?

MR. BATCHELDER: The Hubbards are named and the dates. He was prescribing demerol. Your Honor, I think the defense, as we have contended all along, is that he was being a Robin Hood, going out and buying drugs for people and dispensing them, and we believe there is indication that he was dispensing them in large dosages.

THE COURT: Well, suppose you are able to show that he was dispensing drugs to patients excessively and against the best medical practice, what would that prove?

MR. BATCHELDER: That would go to negate the defense that the $3000 in checks proves he is a nice guy.

THE COURT: No, it doesn't. It only tends to show that he was spending $3000, maybe improperly.

MR. BATCHELDER: That is precisely our point.

THE COURT: That is not an issue in the case. His medical competence is not an issue.

MR. BATCHELDER: We are arguing that in spending that $3000 he is saying, "Look what I am doing for the goodness of people," but he can't say who they are for.

THE COURT: I let you bring that out. But to go on and show that he was prescribing improperly or dosing excessively certain patients is not going to help you to prove that the $3000 was not applied to the patients identified in the indictment.

(In open court.)

THE COURT: The jury will disregard that last question.

Q There came a time when you speculated in gold mining stocks, didn't you?

MR. MARTIN: Objection, your Honor.

MS. NEUGARTEN: May we approach the bench?

THE COURT: I think you better.

(At the bench)

MS. NEUGARTEN: To the extent that in his opening Mr. Martin suggested that he was a man who was not a customary doctor, who lived high and had certain levels of sophistication, didn't go to country clubs --

THE COURT: I can name any number of people who speculate in very chancy stocks, who don't know anything about medicine, and who are not guilty of Medicaid fraud.

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mmds 89 S.Feldman - cross

I don't get the connection. What is the connection?

MR. BATCHELDER: They have been trying to bring out that this man is living close to the line, that he only got an income of $13,000 or $14,000 from Medicaid, that he does not go to the country club. That is Mr. Martin's opening. We all may speculate at different times in securities and everything else.

We are here to prove that he had $30,000 in the bank during all this period of time, that he was engaged in flyers of gold stock. So this negates the idea that he was doing this by the goodness of his heart for the poor, your Honor, and this goes directly to the issue of he is just a Robin Hood dressed up in a white coat running around Dutchess County. That simply isn't the fact.

THE COURT: I still don't get the connection. Suppose he speculated in gold stocks, you are not going to prove whether his speculations were profitable or disastrous. I don't see the relevance. He is not being tried here for high living; he is being tried for submitting false claims.

MR. BATCHELDER: He is putting up the defense that he is not a high liver --

THE COURT: Oh, no.

MR. BATCHELDER: Yes, that is exactly what Mr. Martin said in his opening, sir.

mmds 90 S.Feldman - cross

THE COURT: The defense is truth, that every one of these statements is true.

MR. BATCHELDER: That is hard to find from his requests to charge.

THE COURT: We know what amounts he was getting from Medicaid; we know the amounts he was getting from the Harlem Valley State Hospital. We can readily find out what amount he was getting from his military reserve connection.

Now, whether he was frugal or whether he was a spendthrift, seems utterly inconsequential. If we did not know what his Medicaid income was, you might have a point. But it is already established.

MS. NEUGARTEN: Medicaid income is not in the case. We made an offer of proof during the testimony of Mr. Favino.

THE COURT: It is relevant now on your rebuttal, because you have gotten from him a statement of what they were. So his credibility is on the line. You can put that in now. But you can't put in speculation in gold stocks or country club membership or things of that kind. We are going to have his income.

MR. BATCHELDER: Can we have a direction that Mr. Martin in his summation will not refer to any sort of poverty-type circumstance in line with what your Honor's

mmds 91 S.Feldman - cross

ruling is right here and, that this is not your average doctor?

THE COURT: You are going to prove what his income is?

MR. BATCHELDER: We are going to prove what his Medicaid income is.

MR. MARTIN: You already have proved his salary.

MS. NEUGARTEN: I intend to put in his tax returns into evidence momentarily to show also his business expense deductions, which I think are a test of his credibility, since those are expenses he reported to the government.

THE COURT: Is that going to contradict anything he said before?

MS. NEUGARTEN: His testimony about the nature of his office raises certain inferences.

MR. BATCHELDER: He also says he has not had a vacation in five years, yet he takes $3000 deduction in business expenses.

THE COURT: Travel for vacation is not deductable.

MR. BATCHELDER: He took it.

THE COURT: That travel may be in connection with visiting patients.

mmds 92 S.Feldman - cro-s

MS. NEUGARTEN: He takes separate deductions on expenses.

THE COURT: I don't know what conditions travel would be deductable, unless he was attending a professional seminar or the like.

MR. BATCHELDER: He said he has not had a vacation for five years.

THE COURT: I don't think speculation in gold stocks, which is our immediate problem, is relevant.

(In open court)

Q Did I correctly understand your earlier testimony that you sent your patients to have EKG's taken in some instances where you thought that was appropriate?

A Yes. I did not maintain facilities for any tests.

MS. NEUGARTEN: I request you direct him to answer the question.

THE COURT: Well, he has answered it.

THE WITNESS: I didn't maintain --

THE COURT: That is enough. You have answered.

Q Then do I understand you that your very seriously ill and bedridden patients, such as Jennie Buckwald, Margarita Ocasio, Joseph Perrotta and Marion Paschier were sent by you to hospital facilities to have certain things

done?

A Yes. In fact, Joseph Perrotta was sent to St.Francis Hospital for things like having his blood sugar determined.

Q And these bedridden patients were directed by you to go to hospitals?

A Yes, sometimes they had family members who were good enough to take them there for certain tests, yes.

Q Dr. Feldman, I am handing you a copy of what I believe to be your 1971 income tax return, which has been marked as Government's Exhibit 276 for Identification.

Is that your signature on that return?

A Yes.

Q And would you look through it briefly and see if that is a true copy of your 1971 income tax return?

A Yes.

Q Now, directing your attention to the first page, is it correct that you reported $38,411.16 as income from wages?

MR. MARTIN: Objection, your Honor. I think we should probably approach the bench and resolve this whole problem.

THE COURT: All right.

(At the bench)

mmds 94 S.Feldman - cross

MR. MARTIN: I don't see where the doctor's tax returns and his income become relevant here. Mr. Batchelder referred previously to my opening that he was not a typical country club doctor. I went on to say that the man would not spend his time in country clubs, but traveled to see his patients, and that is what that reference was to, and I think it is clear from the opening statement that is all it was for.

THE COURT: I don't know that his salary income is relevant. If he were making a big salary, it would be less an incentive for him to make fraudulent Medicare claims.

MS. NEUGARTEN: Apart from his salary, on Schedule C, which deals, I believe, with his private practice, there is a gross figure shown, and then he takes deductions, which include supplies which I would like to bring up for clarification here, and what he has testified to for his drug expenses.

THE COURT: Well, I think you can ask him about that, if you want to. I think his salary is not really relevant.

MS. NEUGARTEN: If your Honor wishes to rule on the next three items, so we can avoid frequent bench conferences, we will be putting in the 1972 and 1973 tax returns also.

MR. MARTIN: I object to the returns coming in, your Honor. If there is some specific item that your Honor rules is relevant, that could be gone into.

THE COURT: Certainly, the other income is relevant, and I think perhaps Schedule C is relevant. I guess Schedule C is probably sufficient. It includes all income from private practice, including Medicaid, Medicare receipts. Is there any other part that you thin is relevant that you want to talk about?

MS. NEUGARTEN: It would be the same in each case.

THE COURT: I think Schedule C suffices. You have no serious objection to Schedule C?

MR. MARTIN: I think for the purpose of showing his claim for the drug expense, obviously I do not. Other than that, I do object.

THE COURT: Also, the total amount of income may be relevant, how much he was getting from Medicare.

MR. MARTIN: I have no objection to that, but other items.

THE COURT: They would only help you. If he spent money on repairs and business, and so forth, I should think that could only help the defendant. Is there anything on there you feel seriously prejudiced by?

mmds 96 S.Feldman - cross

MR. MARTIN: Well, I suppose it depends upon what the government intends to do. It seems to me if the only thing is to test his credibility with regard to drug expense, that is relevant. But anything beyond that, I just don't want not to object and then go item by item on cross-examination.

THE COURT: We will have to take the other items out. But I think Schedule C is in.

(In open court)

THE COURT: The jury will disregard that last question.

Q Directing your attention to Schedule C of your 1971 income tax return, do you see the gross figure there for what amounts to your private practice of medicine?

A Correct.

Q And that gross figure is $30,781?

A Yes.

Q Is it also correct that against that figure you took deductions which included travel and entertainment, $1,810.

A Correct.

MR. MARTIN: Objection. I thought that was ruled on before.

THE COURT: This is one of the items that may

be relevant to credibility, depending on what happens. I will permit it subject to connection.

Q And for your business automobile expenses you took $3,950? Is that correct?

A That is correct.

Q And what you characterize as other supplies, you took $6,121? Is that correct?

A Correct.

Q And that figure included your expenses for drugs?

A And supplies.

Q So that included those checks which have been marked as Defendant's Exhibit A?

A Correct.

Q Directing your attention to a document which has been marked Government's Exhibit 377 for Identification, is this your 1972 federal income tax return?

A Yes.

Q Is this your signature here, Dr. Feldman?

A Yes.

Q Again directing your attention to Schedule C, do you see the gross figure here for your private practice as distinguished from your income from wages?

A Yes.

Q And that figure is $37,226? Is that correct?

A Yes.

Q And against that you deducted $5000 for business and automobile expenses? Is that correct?

A Yes.

Q And $1200 for travel and entertainment expense?

A Yes.

Q And this time you itemized and you deducted $3000 for drugs and medicines? Is that correct?

A Yes.

Q Showing you your 1973 income tax return, which has been marked as Government's Exhibit 378 for Identification, do you recognize that document?

A Yes.

Q Is that a true copy of your 1973 income tax return?

A Yes.

Q That is your signature on this document?

A And my wife's.

Q Again, directing your attention to Schedule C, that is your income from your private practice in medicine?

A Yes.

Q And at the time the gross figure was $21,867? Is that correct?

A Yes.

Q Against it you took business expenses which you didn't identify?

A They are identified somewhere in the form.

Q Would you look and see under item 19 where they are identified?

A Not on this form, apparently, but there may have been an appendage.

Q Do you see the appendage there?

A There is no appendage here -- oh, pardon me, there are figures here which are not otherwise explained.

Q And it says here "Other business expenses (specify)"? Is that correct?

A Yes.

Q And there is no specification?

A There is no identification of them. It might have been an oversight on my part in submitting it.

Q And those items are $3,703, $1,285, $1500, and $2,240?

A Yes. May I estimate what they represent now?

MS. NEUGARTEN: I request that you direct him to simply answer my question.

THE COURT: Well, he has asked you whether he can estimate it, and you answer is no?

MS. NEUGARTEN: No.

mmds 100 S. Feldman - cross

Q Isn't it true you were twice reprimanded by the Harlem Valley State Hospital for submitting claims for treating employees four and five times when you had only treated those employees one time?

MR. MARTIN: I object to the relevance.

THE COURT: Overruled.

Q Did you answer, Dr. Feldman?

A To be specific, there was one instance of an employee named Leonard Rabidou --

MS. NEUGARTEN: I believe the question simply called for a yes or no.

THE COURT: Read the question again, please.

(Question read)

A Yes.

THE COURT: The answer is yes?

THE WITNESS: Yes.

Q And the first such instance was in 1972? Is that correct?

A In the case of Leonard Rabidou, yes.

Q And there was another instance in 1974? Is that correct?

A I don't clearly recall the episode in 1974. I only worked in Harlem Valley until June 24, 1974.

Q Were you reprimanded in connection with

Robert Lamear?

A No, I don't believe so.

(Continued on next page.)

mmpl 102 S.Feldman-cross

Q Do you recall having a conversation on July 15, 1974, where a Deputy Director of Harlem State Hospital in which you discussed the fact that you had billed an employee for an office visit when you only gave him emergency care when he was on duty in what was called the Quarterway House?

A Well, I do recall that incident, but I don't recall being reprimanded for the incident. I simply was not paid for it.

Q Do you recall being told that the Deputy Director was going to recommend that charges be preferred against you for that incident?

A I don't recall that.

Q Directing your attention to a document which has been marked Government's Exhibit 262-A for identification, a memorandum addressed to you from Deputy Director (clinically) dated July 15, 1974, and directing your attention specifically to the last paragraph of that memorandum, does that document refresh your recollection?

A I don't recollect this --

Q Do you recall receiving this document?

A Oh, yes, I recall it now.

Q You recall receiving the document?

A Yes.

Q I am handing you two documents which have been marked Government's Exhibits 217-A for identification and 218-A for identification, does your signature appear on both of those documents?

A Yes.

Q Are these bills for services rendered to Robert Lanier in 1974?

A Yes.

Q Isn't it a fact that you submitted those bills to the GHI Insurance Company in 1974?

A Yes.

Q Now, directing your attention to the handwritten document marked Government's Exhibit 249 for identification and a typed document marked Government's Exhibit 225 for identification, isn't the handwritten document a handwritten version of a bill for five visits to Leonard Rabidou, and it is a handwritten version of the same things as the typed bill?

(Pause.)

Q I believe there is a pending question, Dr. Feldman.

THE COURT: He is checking.

THE WITNESS: These appear to be similar.

mmp3 104 S.Feldman-cross

Q And these are bills that you submitted to Leonard Rabidou in 1972?

A Yes.

Q I am handing you a document which has been marked Government's Exhibit 221 for identification, a letter to you from Albert Dressner, Acting Director of Harlem Valley State, dated April 10, 1973, do you recall getting this letter?

A Yes.

Q Do you recall, therefore, what Dr. Dressner admonished you for?

MR. MARTIN: Objection, your Honor. I would like to approach the bench on this.

(At the bench.)

MR. MARTIN: The fact that this letter was received does not make admissible Dr. Dressner's conclusions or statements.

MS. NEUGARTEN: I think that the defendant has answered that he believed the bills he submitted to Medicaire were perfectly proper, and as an indication of his state of mind at the time he was submitted the bills for Medicaire subsequent to this letter for what might be considered a similar act, the fact that he had been admonished for the identical behavior, as Dr.

mmp4 105 S.Feldman-cross

Dressner termed it, goes to whether he was submitting the bills in good faith.

THE COURT: Let me see the letter. This is not hearsay. This is an admonition and caution. The government is not relying upon this letter to prove that there was grounds for the admonition or for the caution, but only for the fact that he was admonished and cautioned. Of course, he has already admitted in the instance of Rabidou that he was disciplined, reprimanded, I guess was the word used.

MR. BATCHELDER: He didn't say when. This establishes when.

THE COURT: This establishes as of 1972.

MR. BATCHELDER: He didn't say when in 1972. He didn't remember in June getting out. This goes to show precisely that he was of necessity he was doing precisely the same thing and it would necessarily go to refreshing his recollection.

THE COURT: I don't think it is relevant to intent. The testimony here is not that he did these things inadvertently, but that the claims were true, that he actually visited the patients on all of the dates he claims. I don't know why you need the letter.

mmp5 106 S.Feldman-cross

He has already admitted that he was reprimanded, and all this letter does is state that"You are admonished and cautioned."

(In open court.)

Q Is it true that you only saw Mr. Rabidou for one treatment and Mr. Lanier for one treatment?

A In the case of Mr. Rabidou, I researched --

MS. NEUGARTEN: Would you direct that he answer the question?

THE COURT: Was it true that you only saw Mr. Rabidou for one treatment?

THE WITNESS: I interviewed him and examined him on one occasion and then proceeded to research the case and write a report.

THE COURT: But you only saw him once? Is that right?

THE WITNESS: Yes.

THE COURT: When you saw him, did you treat him or just examine him?

THE WITNESS: I examined him and derived from him sufficient information on which to base a research project and a report.

Q Is it true that you only saw Mr. Lanier, you only treated Mr. Lanier on one occasion also?

mmp6 107 S.Feldman-cross

A No, I treated him on several occasions for the same disease.

Q You treated Mr. Lanier on several occasions?

A Yes.

MS. NEUGARTEN: I have no further questions of this witness, your Honor.

THE COURT: Any redirect?

MR. MARTIN: Your Honor, may I have a brief recess?

THE COURT: Well, I think it is a little bit early for it, but we might take our afternoon recess now. Ten minutes.

(Recess.)

REDIRECT EXAMINATION

BY MR. MARTIN:

Q Dr. Feldman, Ms. Neugarten asked you about a number of forms that have been filed with Medicaire. I will show you again the forms of Jule Adams that are referred to in the indictment. I believe you were asked whether you performed these services indicated on those forms on the dates indicated, at the place indicated?

A Yes.

mmp7 108 S.Feldman-redirect

Q Is it your testimony that you were in Miss Adams' home on each of the dates indicated on those forms?

A May I explain further?

Q Yes, would you, please?

A The description reads each service. Now, this includes such matters as obtaining the medication for the patient, it includes such things as minor surgery, which may not be indicated here, and includes such services as psychiatric services, which may not be indicated here, it includes such services as researching the case in my library and so on. But the majority of the services, according to the dates, represent actual visits to the patient.

Q Would your answer be the same with all the other forms, regarding all of the other forms that you were shown by Ms. Neugarten that have services of patients with the indication "H"?

A Yes, it would.

Q Now, you were asked by Ms. Neugarten whether or not you performed services for Thomas Petty at a time when Mr. Petty was incarcerated, that is, in jail. Do you recall being asked about that?

A Yes.

mmp8 109 S.Feldman-redirect

Q Will you tell the jury what services you performed for him, sir?

A Yes, after he was incarcerated I was contacted by the Public Defender's Office of Dutchess County when they determined that I had been treating him. In response to their request, to assist them, which I continued to do until the time that Mr. Petty was convicted, I did assist the man in terms of obtaining his records from the Hudson River State Hospital, where he had been a patient, studying the record for the purpose of assisting this man in his defense, possibly on the ground of insanity; I assisted this man in making calls to the County Sheriff to make certain that this man got three different kinds of epileptic medication which I had on him, including Dilantin, Phenobarbital, and Masolin in very substantial doses. Everytime I visited I left his mail for him in order to be sure it not be lost, and that it be put in his personal account for his future use. I inquired after him. And on those occasions when I did actually see him face to face, I found at times he was very confused. On one occasion he was confused to the point of being psychotic, which I attributed to the fact that he was not receiving medication in an amount sufficient to

mmp9 110 S.Feldman-redirect

control his epilepsy, and I was very concerned. He had fallen so much as a result of having seizures that his face was contused, and throughout his period of incarceration I remained concerned about his general welfare, and I did assist him in testifying at his subsequent trial.

Q You were asked about an incident involving a Mr. Leonard Rabidou and Ms. Neugarten, I believe, put before you two exhibits, which are Governments Exhibits 249 and 225 for identification, which lists certain visits. The form says visits?

A Yes.

Q How many times did you visit Mr. Rabidou?

A I visited him in his place of employment. I visited him in person.

Q The question is, how many times?

A Possibly once.

Q What are the services that you performed for Rabidou?

A I researched his case history, I researched the relationship between rheumatoid arthritis and pulmonary tuberculosis, and I composed a letter to the New York State Retirement System for his benefit, which enabled him or would enable him to apply for a

mmp10 111 S.Feldman-redirect

disability pension on the basis of his pulmonary tuberculosis and his rheumatoid arthritis.

Q To whom were those bills sent?

A They were sent directly to the patient.

Q Mr. Rabidou?

A Yes.

Q And another person that Ms. Neugarten asked you about was Robert Lanier?

A Yes.

Q She showed you some forms marked 217 for identification and 218 for identification. Now, those list certain visits to Mr. Lanier? Is that correct?

A Yes.

Q Did you see Mr. Lanier on each of those dates set forth?

A Yes.

MR. MARTIN: I have nothing further, your Honor.

RECROSS EXAMINATION

BY MS.NEUGARTEN:

Q Dr. Feldman, handing you invoices as to Jule Adams that I questioned you about in my earlier examination, on any of these invoices do the services refer to the fact of obtaining medication for Miss Adams?

mmp11 112 S.Feldman-recross

A I expressed it as administration of medication.

Q Do any of the forms refer to the research in the library for Miss Adams?

A The word being "diagnostic checkups," may include research activity.

MS. NEUGARTEN: Your Honor, would you direct the witness to answer the question?

MR. MARTIN: I think that is responsive.

THE COURT: He has answered. What he is saying is checkup includes library research, as well as examination of the patient? Is that what you are saying?

THE WITNESS: Yes.

Q That is how you understood the word "diagnostic checkup" to have its ordinary meaning?

A Yes, that might include reference to material.

Q Do these forms refer to psychiatric treatment in any place?

A Where it is extremely pertinent to the situation --

MS. NEUGARTEN: I don't believe that answers the question.

THE COURT: Read the question.

(Question read.)

A In those instances psychiatric diagnosis is

mmp12 113 S.Feldman-recross

mentioned.

Q Will you show me which forms mention psychiatric treatment?

A Which forms? On Jule Adams?

Q On Jule Adams.

A I doubt there are any.

Q Didn't you testify that these forms were correct because you administered psychiatric treatment to her?

A I did not say I administered psychiatric treatment to her -- other cases.

Q As to Jule Adams?

A I said where it is extremely pertinent to the situation. I didn't say that in the case of Jule Adams.

Q You did not in examination by Mr. Martin?

A Nor to Mr. Martin.

Q Now, directing your attention to the forms as to Thomas Petty, would you please review these and tell me where in these forms you have charged for something you have described as making calls to the County Sheriff? Is there any instance where you have described that service?

A It could come under the heading of medical

mmp13 114 S.Feldman-recross

treatment.

Q Is there any instance where you have described the service of picking up Mr. Petty's mail for him?

A No.

Q Now, again, directing your attention to the bill to Mr. Rabidou, Government's Exhibit 249 for identification, that is for visits on five dates? Is that correct?

A For services on five dates, yes.

Q It says visits on five dates.

A It may have implied services as well.

Q And, again, directing your attention to the forms that you submitted to GHI as to Mr. Lanier, those refer to visits, do they not, visits for treatment?

A Yes, I always indicate that some type of treatment was given on all GHI forms.

Q So there was some kind of actual treatment given on May 9, 10, 13, 14 and 15 of 1974 to Mr. Lanier?

A That is correct.

MS. NEUGARTEN: I have no further questions of this witness.

MR. MARTIN: I have none, your Honor.

THE COURT: Thank you.

(Witness excused.)

* * *

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United States of America

-vs- 76 Cr. 44

Seymour C. Feldman

New York, New York
November 9, 1976
10:00 A.M.

HONORABLE WILLIAM C. CONNER,
District Judge

(In the absence of the Jury.)

MR. MARTIN: Your Honor, in reviewing my notes I did raise the question yesterday of the false claim statements and the elements of that, and you referred back to knowledge and intent, and my recollection was that you said in the reference back, you told the Jury that good faith was a defense on that issue. That would tie into another point. Your Honor did not tell them with regard to the false claim Counts that they would have to find that the claims were made with an intent to defraud.

MR. BATCHELDER: We took notes, and our view is you did cover that. I would say it was almost three-quarters through your Charge, and your Honor to highlight that at this point after you have covered it already would seem not to be the wisest thing. Indeed, I think you took most of that issue out of Mr. Martin's request to your Charge.

THE COURT: Well, to tell the truth, I was

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winging it a little bit when I got to the second part of the Indictment, and the reason is there is some confusion that I had not previously noticed in the Government's proposed charges. If you will look at the definition of the three elements or four elements in request number fifteen, the first element is the defendant knowingly and wilfully made or presented a claim to a Government agency, and the second is that such claim was made or presented upon or against a United States Government agency. Now, apart from the duplication between those two, if you will look over here a little further, when you are discussing the elements -- no. Maybe the confusion was mine, instead of yours. I guess it was the duplication that got me, because the first element says the claim was presented to a Government agency, and in the second it was presented to a Government agency.

MS. NEUGARTEN: If you turn back to request number fourteen, the statute says, first, the claim has to be presented to the agency, and, second, that it has to be a claim upon the agency. Now, I guess one is presenting it to them, and the other is the agency. The statute is drafted in a sort of a strange fashion.

THE COURT: If you will look at fifteen, the first element is that the defendant knowingly and wilfully made or presented a claim to a Government agency, and the

second is such claim was made or presented upon or against a United States Government agency. I didn't get that distinction, and perhaps some qualification is necessary. I think it won't do any harm if I run through those elements again, and, at the same time, I can take care of the point you have in mind, Mr. Martin.

MR. MARTIN: Your Honor, with regard to the reckless disregard charge, I tried to follow that against the request that we had submitted to you that you said you would give. It seemed to me, your Honor, that you omitted from that charge the following portion -- if you have our request number fourteen at page three --

THE COURT: I did omit a little of that. I didn't read it completely, because it seems to me so extensive it was redundant.

MR. MARTIN: Your point I am referring to, on page three, that first full paragraph that begins, "Again, if you find regardless of the circumstances that Dr. Feldman actually believed that the claim as made was true, you must return a verdict of not guilty on that Count." That language was not given, your Honor, and I think that is language that the Court of Appeals has indicated should be given in reckless disregard.

MR. BATCHELDER: Your Honor, we believe it was

given.

THE COURT: I can't understand why it is necessary to say that specifically. When you are talking about recklessness in the sense of having a conscious purpose to avoid learning the truth, how can you actually believe something and at the same time have a conscious purpose to avoid learning the truth.

MR. MARTIN: I think that may be true, but I think when the courts recognize that this whole recklessness aspect is really an area of circumstantial proof of knowledge, and the fact is, no matter what else, if you really do believe it is true, then you can't be guilty of knowingly submitting a false claim. My recollection is that the Second Circuit said that that language should be given.

THE COURT: Let us see what happens. I will bring them out and start to play variations on the theme.

MR. BATCHELDER: The Government would object to that. You did the reckless disregard charge based in part on the Government's request, but this seems to be pretty specific.

THE COURT: I think if I work it in along with a rehearsal of the four elements that the Government must prove in order to make out an offense under the second group of Counts it won't give undue notoriety to it or undue emphasis to it.

You have anything further?

MR. MARTIN: No, your Honor. I believe that covers everything that I had. Unfortunately, I must note the absence of my client. I was told yesterday that they ran into terrible traffic coming down and was assured they would take the train to avoid that this morning. I did notice when I came in much earlier there was some slight backup on the Penn-Central, now Con Rail.

THE COURT: Is he coming on the train or is he driving?

MR. MARTIN: His wife told me that they would take the train today to avoid the traffic problems. I don't know.

THE COURT: What do you suggest, that we not bring the Jury out for supplemental instructions until he gets here?

MR. MARTIN: I am not just comfortable that I could waive his presence.

MR. BATCHELDER: Your Honor, can we have an instruction that this delay is not the fault of the Government? This is the fourth day, your Honor, that this hocus-pocus has occurred.

MR. MARTIN: I do know yesterday they had left their house at 6:30 in the morning.

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THE COURT: Well, t[illegible] is still not good enough. He ought to leave at 5:30. I don't care what time he has to leave in order to get here on time. He is a man who can afford to spend the night in New York if he needs to in order to be here on time. We have waited for him not once, but several times. Once it was an hour and fifteen minutes we waited on this man. He has his own ways of getting the extension of time he wants; he just takes it, and, in effect, he defies the Court to do anything about it. I am disturbed about it. I am trying to protect the Jury from learning that he is the cause of all this delay. Up to now I have done it. I am not going to accept your suggestion that I tell the Jury that the inconveniences are not attributable to the Government. I think he has enough problems. But I am not promising that I won't take other remedies that are available to the Court when its starting times are repeatedly ignored. This is a great inconvenience to me and to others, because I have got counsel and defendants in a four-defendant narcotics conspiracy ready for me up on the fifth floor right now, or the sixth floor, in Room 618, to start a trial this morning. And I just got to go up there and then break that proceeding when the defendant chooses to show up. To say that I am disturbed is to put it mildly. I think it is very close to contempt. I hope you will make my displeasure known to him in strong terms.

MR. MARTIN: I certainly will.

Apparently, when you said there were 44 Counts left, there were only 43.

MS. NEUGARTEN: Yes.

THE COURT: I will tell the Jury about that.

(Recess.)

(The defendant made his appearance at 11:50 a.m.)

(In the absence of the Jury.)

THE COURT: Do you have an explanation for your client being this late?

MR. MARTIN: They got caught in traffic and that is the reason they were delayed. Dr. Feldman told me this morning when they went to take the train, they got to the train station just as the train was arriving, they could not find a place to park, and so they missed the train.

THE COURT: And that caused them to be an hour and forty minutes late?

MRS. FELDMAN: No, the next train was a local train. We took the next train and it was slower than it was supposed to be, and instead of coming in at ten, it came in at quarter to eleven.

THE COURT: You have been very cavalier about keeping the schedules of this court. You have kept fourteen

Jurors waiting for an hour and forty minutes back in that little room; you kept all of counsel and the Court waiting. I will at the conclusion of these proceedings consider what, if anything, to do about this cavalier treatment of the court schedule.

Let us bring in the Jury.

(Jury in box.)

THE COURT: There are a couple of items that I want to clarify, but before I do, I want to apologize to you for the fact that you have been kept waiting. We have had some unavoidable delays. It is not pleasant to sit back in that little room, fourteen of you, not knowing what is going on, and I am very sympathetic with your feelings in this situation. If you are furious, you would be perfectly justified. I am furious, but the circumstances were such that nothing could be done.

There are two things I want to clarify: one is, I referred to the fact that there are two groups of Counts in the Indictment. The first ten Counts involve the so-called mail fraud charges, and the second group of Counts, which relate to the false claim charges. I said that there were 44 in the second group of Counts, 44 Counts; that is incorrect; there are 43. There were 7 Counts which have been dropped. The copy of the Indictment, which will be retyped, will drop

those 7 charges and will show you which Counts are remaining. So everything that I said is so, except the number, which is 43, instead of 44, in the second group, making a total of 53 in all.

I think there was a little confusion in my discussion of the elements which the Government must establish beyond a reasonable doubt in order to make out a case of mail fraud under each of the 43 mail fraud counts, and I would like to very briefly review the four elements that the Government must establish and to explain those again to you briefly, because I did confuse them a little when I talked about them yesterday, and I think the review would be good, in any event, because of the passage of time.

The first element that the Government must establish beyond a reasonable doubt is that the defendant knowingly and wilfully made or presented a claim to a Government agency or caused it to be made or presented. Now, what is referred to there is the fact that the claim must be made to a Government agency.

The evidence here, as you will recall, shows that a number of claims or Requests for Payment were sent to the United Medical Service or to Blue Cross-Blue Shield, and that they were acting, in effect, as an arm of a Governmental agency in making these payments, and that those records were

ultimately forwarded in accordance with customary practice to the United States Department of Health, Education and Welfare.

The second element, which also must be proved beyond a reasonable doubt, is that the claim was made or presented upon or against a United States Government agency, here, the Department of Health, Education and Welfare.

Now, the difference between 1 and 2 is that in 1 the claim must be presented to the agency, and in 2 the claim must be made against or upon the agency, in other words, it is the agency that ultimately is going to do the paying.

Third, the Government must prove beyond a reasonable doubt that the claim was false, fictitious or fraudulent, and, four, that the Government must prove beyond a reasonable doubt that the defendant knew when he submitted the claim that it was false, fictitious or fraudulent.

So the four elements are the claim is to an agency of the Government, the claim is upon an agency of the Government, that is, the Government is going to pay, third, that the claim was fictitious or fraudulent, and, fourth, that the defendant knew it was false, fictitious or fraudulent.

With respect to the last element, knowledge, I did instruct you that it is always difficult to prove what a person actually knows, because you have no instrument by which you can look into his mind, so you have to determine his

knowledge and his intent by his actions and by his words. What did he do? What did he say? That form of circumstantial evidence is the only evidence we can ever have about what a man really knows or what he intends. If he tells us what he knows, then, obviously, he has got to know it; if he tells us what he intends, we may or may not believe that is what he really intends; if he does something, we may judge his intentions by his actions, and, often, actions do speak louder than words.

Now, if you do not find that the defendant had actual knowledge of the falsity of the claims that he was making or caused to be made to and against a Government agency, you must still find that he had constructive knowledge, or the equivalent of knowledge, if you find beyond a reasonable doubt that he closed his eyes to facts that he had every reason to believe to be true.

Now, in order to find that, you must find that the defendant acted with a conscious purpose to avoid learning the truth. I instruct you again, that if you find that Dr. Feldman actually believed that the claim was true, then you must acquit him on all of those second group of 43 Counts. So the Government has got to satisfy you beyond a reasonable doubt that the defendant had actual knowledge of falsity, or constructive knowledge, as I have defined it, that is, that he

closed his eyes to the truth with a conscious purpose to avoid learning the truth.

Do counsel want to approach the bench about any exceptions?

MR. MARTIN: Just for a moment, your Honor.

(At the bench.)

MR. MARTIN: I asked your Honor to instruct the Jury there was an intent to defraud necessary with regard to the false claim Counts.

THE COURT: It is not listed in the four elements.

MR. BATCHELDER: This goes on and on. You covered it the first time, your Honor, in the mail fraud.

THE COURT: I covered it with reference to 1 to 10, but I think it ought to be a fifth element.

MS. NEUGARTEN: Knowledge of falsity is all the statute requires.

THE COURT: Well, let us look at the statute. Intent is not specifically in the statute.

MR. MARTIN: We cited some cases in our request and suggest that should be covered, your Honor.

THE COURT: You did cite some cases.

MR. BATCHELDER: Significantly, none of them deal with this issue here.

THE COURT: We are talking about Section 187.

MR. MARTIN: I have to confess, your Honor, those were prepared by one of my associates, so I cannot represent to you that they do deal with Medicare fraud.

THE COURT: Are you really prepared to say that intent is not an implied element?

MS. NEUGARTEN: Intent to make a false statement?

THE COURT: No, knowledge that the statement is false? You got to have more than intent to make a false statement; you have to have a consummation? It is your point that that is the way you want to roll the dice?

MR. BATCHELDER: That is the way we roll it.

MR. MARTIN: It does not hurt to clarify it.

(In open court.)

THE COURT: I think I may have referred to the second group of Counts, 11 through 60, those 43 Counts at one point as the mail fraud Counts; they are the false claim Counts. The Counts 1 to 10 are the mail fraud Counts.

Now, you may retire to begin your deliberations. Let me caution you about this; the deliberations of the Jury should take place only with all twelve members of the Jury present. If you happen to run into one of your fellow Jurors in the hallway or on the subway platform on the way home, don't discuss this case. We don't want two or three or four Jurors getting together to discuss the case out of the

presence of the other Jurors.

At this point we can finally excuse our two Alternate Jurors. We thank you very much, Mr. Keeney and Mr. Beller, for bearing with us. As you can understand, you performed a very important function, and if any of the other Jurors had to be excused, one of you would have taken his place and we would not have had to start the trial all over again from the beginning, which would be a terrible waste of time and effort. Thank you very much for bearing with us and you are discharged. The Clerk has your certificates of service. Thank you very much. You should get your things out of the jury room before the others get in, because the other Jurors should not discuss the case with you or anyone else.

(Alternate Jurors excused.)

MR. BATCHELDER: Do you wish to give the Foreman a copy of the Indictment, unless there is some objection?

MR. MARTIN: No objection.

THE COURT: My copy has a little underlining. Have you a clean copy?

MS. NEUGARTEN: Your Honor, I believe we do, yes.

(Marshal sworn.)

(The Jury retired to begin its deliberations at 12:10 p.m.)

(The Jury had lunch between the hours of

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1:00 p.m. and 2:00 p.m.)

(At 2:30 p.m. the following took place in the absence of the Jury.)

THE COURT: I have a note from the Jury which reads:

Military service schedule and patient's forms for those periods.

Blue Cross forms for payment on all Counts in the Indictment.

(Note marked Court's Exhibit 1.)

THE COURT: I would ask that you select those out.

MR. BATCHELDER: We will pull all those forms out and send them into the Jury.

THE COURT: Yes, while you are doing that I will take a sentence in another case.

(The following took place at 3:35 p.m. in the absence of the Jury.)

THE COURT: I have a note from the Jury which reads as follows: the instructions from the Judge to the Jury on all Counts.

(Note marked Court's Exhibit 2.)

THE COURT: I assume they do not want a repetition of the entire Charge, but just a summary of the essential

elements which must be proven with respect to each Count. I will give them just that. If they want more, I will have to give them more.

Any comments or suggestions?

MR. BATCHELDER: Just with respect to the essential elements, yes, the Government has no objection to that. That seems to be what they are driving at.

MR. MARTIN: Your Honor, the best I can do is hear what your Honor gives, and if I have some suggestions, it might be appropriate at that time.

MR. BATCHELDER: I think if your Honor gave the Charge once and it was not objected to, it would not be objected to now. Shall we continue to get defense counsel suggesting?

THE COURT: He is trying to do his job.

MR. BATCHELDER: I am, too, your Honor.

THE COURT: And I think his comment that he will wait and hear what I say and then object if he thinks it is objectionable is an unobjectionable comment. So we will proceed on that basis.

MR. BATCHELDER: So we don't then get what is objectionable to the Government.

THE COURT: You can object to that.

MR. BATCHELDER: My objections don't go very far

on the seventeenth floor, if we ever get there.

THE COURT: Bring the Jury in.

(Jury in box.)

THE COURT: I have your note which reads the instructions from Judge to Jury on all Counts. I assume you do not want me to repeat the entire Charge, but what me to do is to summarize the essential elements that the Government must prove in order to make out a case.

THE FOREMAN: That is right, your Honor.

THE COURT: Now, first, with respect to the mail fraud Counts, 1 through 10, there are essential elements that the Government must prove, and it must prove each of these three elements beyond a reasonable doubt:

First, that the defendant, Seymour Feldman, engaged in, participated in, devised or intended to devise a scheme or artifice to defraud, or to obtain money or property by false or fraudulent pretenses or representations.

In other words, the first element is the devising of a scheme to defraud or to obtain money by false representations.

Second, that for the purpose of executing that scheme, the defendant used or caused another to use the mails as set forth in the particular Counts you are considering, in other words, that on a certain date he mailed a claim [illegible] certain

services rendered for a certain patient or caused that claim to be mailed.

The Indictment enumerates in Counts 1 through 10 the dates of the claims and the patients for whom the services recited were said to have been performed.

Three, that he did so unlawfully, wilfully and knowingly.

So as to Counts 1 through 10, the three elements are the devising of the scheme, the use of the mails for the purposes of carrying out the scheme, and that this was done unlawfully, wilfully and knowingly.

Now, the words "knowingly" and "wilfully" I defined as being with knowledge and awareness and intentionally and deliberately, as distinguished from accidentally or inadvertently or under coercion.

With respect to the second group of Counts, the 43 Counts, 11 through 60, with the 7 omissions, there are four elements that the Government must prove beyond a reasonable doubt in order to make out the offense charged in each of those Counts, and it must prove each of those four elements beyond a reasonable doubt: first, it is that the defendant knowingly and wilfully made or presented a claim to a Government agency;

Second, that the claim was made or presented upon

or against a United States Government agency.

Now, those sound similar, but they are slightly different. The first element says that the claim is to be made to the agency, and in this connection you may recall I said that the claim in each instance was, I believe, made to United Medical Service or to Blue Cross-Blue Shield, who was acting as an agent for the United States Government in the processing of these claims. They were, in effect, the insurer who handled the transactions. But the ultimate effect, which you will have to find, was that an agency of the United States was ultimately responsible financially for the reimbursement of that claim, in other words, that the claim was effectively presented upon or against the United States Government.

The third is that the claim was false, fictitious or fraudulent, and the fourth was that the defendant knew when he submitted the claim, that such claim was false, fictitious or fraudulent.

Now, with respect to knowledge, you may recall that I told you that it is impossible to prove actual knowledge, except by circumstantial evidence, such as, what a person did and what a person said. And I also told you that even if you do not find that the Government has proved actual knowledge, it will suffice if you find beyond a reasonable doubt that the Government has proved constructive knowledge, by which I mean,

that the defendant deliberately closed his eyes to facts which should have been obvious to him, with a conscious purpose to avoid learning the truth. I also told you that if you find that he actually believed that the claims being submitted were true, that is sufficient to justify a verdict of not guilty. Stated even more strongly, if you find that the Government has failed to carry its burden of convincing you beyond a reasonable doubt either that the defendant actually knew or that he had constructive knowledge, that he deliberately closed his eyes to facts which should have been obvious with a conscious person to avoid learning the truth.

Now, does that give you everything you wanted, or is there more you feel is still unclear?

MR. MARTIN: May I be heard at the bench?

(At the bench.)

MR. MARTIN: I think two things I would like to bring up: one, with regard to the mail fraud Count, you didn't tell the Jury they must find that the defendant acted with intent to defraud.

THE COURT: I have charged them, and I asked Mr. Batchelder if he is willing to stake his case on the failure to charge specifically intent as a requisite.

MR. MARTIN: Your Honor made that ruling with regard to the false claim Counts. I am talking about the mail

fraud Counts, in which the Government's own instructions have an instruction that there must be an act with intent to defraud.

THE COURT: Is that your only point?

MR. MARTIN: No, the other is as to the false claims section. Your Honor did not tell the Jury that the claim must be false or fraudulent in some material respect. I think that is also important. I think both these issues are important, because this is really a mens rea case. The question is, did he intend to defraud? Did he know it was materially false?

MR. BATCHELDER: I would like to have Mr. Martin show me in the statute as to the material misrepresentation? It is not even in the statute.

THE COURT: I am going to charge with respect to intent. The second element refers to purpose, which is synonymous with intent. I think to balance it I should perhaps refer to the intent. But I don't know about the materiality, really. That is not an expressed element in any of these offenses.

MR. MARTIN: It has been construed it has to be material.

THE COURT: If there was a false statement here it was probably material. Now, in other words, if he didn't

see the patient at all, that has got to be material. Now, if he saw him for the purpose of taking his blood pressure and he says, "I saw him for the purpose of taking a urinalysis," maybe that is not material.

MR. MARTIN: Suppose he saw the patient, rendered the service, and the patient did not sign the form.

THE COURT: Now, you are not saying a forged signature is immaterial, are you?

MR. MARTIN: If the bill was correct and the services were performed?

MR. BATCHELDER: That would violate every rule of common sense in the book, if he forges a person's signature.

MR. MARTIN: The place of service? Suppose he saw him in the office and not at home?

THE COURT: You may have something there, or if he saw him in the domicile of a jail.

MR. MARTIN: Or if he saw him at Fort Dix, New Jersey.

MS. NEUGARTEN: Would you again repeat your earlier Charge?

(In open court.)

THE COURT: Counsel suggested I should supplement my Charge in a couple of respects, and I will do that.

With respect to the first group of Counts, the

mail fraud Counts, you might recall that the second element was that for the purpose of executing the scheme or artifice he used or caused another to use the mails. Now, that word "purpose" refers to a man's intent, his objective, what he is trying to accomplish. Intent, like knowledge, is not something that you can determine by direct evidence; you can only determine it by what a man does and what he says. Much more reliably, perhaps, by what he does, than what he says. But you must find that the defendant mailed or caused to be mailed false and fraudulent claims with the intent of defrauding someone out of money or something else of value. It is not necessary for the defendant to know that he is violating any particular law, but it is necessary that you find that he did what he did with, at least, a general knowledge of its impropriety.

Now, with respect to both sets of Counts, not just the second set of Counts, 11 through 60, the so-called false claim Counts, I told you before, and I remind you again, that in order to find the defendant guilty under those Counts you must find that the claim which was filed or caused to be filed by the defendant was false in some material respect, by that I mean, a significant or substantial respect. If, for example, he made a minor misspelling in the name of a patient--you may be able to think of any number of other types of

errors -- which would not substantially affect the validity of the claim, that would be insufficient to form the basis of a finding of guilty. In other words, you must find that the claim was false in some substantial and significant respect.

Obviously, if he claimed to have performed the service for a patient for whom he actually performed no service at all, that, I am sure, you would find would be material. That is substantial and significant. Now, I am not going to give you examples of all the gradations between those two extremes, but you will have to decide whether or not the claims which were filed were false in a material respect.

I want to remind you again that you need not find that they are false in more than one substantial respect: only one material respect is sufficient to make the claim false for the purpose of returning a verdict of guilty on those Counts, 11 through 60.

Does that cover the points we discussed at the bench? I believe it does.

MR. MARTIN: Yes.

MR. BATCHELDER: Yes.

THE COURT: Does that take care of all your problems?

THE FOREMAN: Yes.

THE COURT: Thank you.

(The Jury retired to continue its deliberations at 3:55 p.m.)

(The following took place at 5:45 p.m. in the absence of the Jury.)

THE COURT: I have indicated to the Jury I would let them go before six if they had not reached a verdict. They apparently have not. I will call them in and let them go until 10:00 o'clock in the morning.

(Jury in box at: 5.45 p.m.)

THE COURT: It was either late last night or this morning I was asked how late I would keep you, and I indicated I would not keep you after six and let you go a little before six, so you could get home to your families at a reasonable hour. I am going to excuse you till ten o'clock in the morning. I instruct you not to discuss the case in the meantime with your fellow Jurors or anyone else. Try to be prompt tomorrow, so that you can get started without any delay. If one of you should be late, it means the Jury can't start without you. So make a special effort to be here a little ahead of time, so if there is any unforeseen delay in transportation, you won't keep the others waiting.

Have a good evening.

(Whereupon, an adjournment was taken to November 10, 1976, at 10:00 o'clock a.m.)

United States of America

-vs- 76 Cr. 44

Seymour C. Feldman

New York, New York
November 10, 1976
10:00 A.M.

HONORABLE WILLIAM C. CONNER,
District Judge

(In the absence of the Jury.)

THE COURT: I have two notes from the Jury. The first is:

Is there testimony for Wilcox? If so, let us hear it.

And the other is:

"Would like to hear Mrs. Scott's testimony, Mr. Roberts."

It might be easier to tell the Jury Wilcox did not testify, that the only testimony was that of the prosecution in regard to a person who introduced records of his hospitalization.

MS. NEUGARTEN: The note does say testimony for Wilcox, rather than testimony of Wilcox, and I think there is a distinction.

THE COURT: I will simply say to them that Wilcox did not testify, that the testimony was that of a

hospital administrator whose name was --

MS. NEUGARTEN: Mrs. Lovel.

THE COURT: And that if they want to hear it, they may, but I expect that they do not want to, and let them make the decision as to whether they want to hear it.

MR. BATCHELDER: Mrs. Lovel came in and said that Mr. Wilcox was not treated during that period of time. It seems a bit disengenuous to say no for starters. She testified, and I think it is very simple and it is short. Probably the Court would just like to hear what she said, because she simply did not introduce records.

THE COURT: I have a note as to what she said. After identifying the records, she said there was no reference in the records to treatment by the defendant and that treatments were normally recorded in hospital records.

MR. BATCHELDER: Possibly you might narrow your quest closer to the Jury.

THE COURT: The note says for Wilcox.

MR. BATCHELDER: That is the kind of testimony which, of course, is devastating to Mr. Martin's position.

THE COURT: If I am going to marshal the evidence to the extent of telling them that Mrs. Lovel said that there was no reference in the records to the treatment by the doctor, I am going to have to also say that the doctor said

he visited Mr. Wilcox in the hospital.

MR. MARTIN: You may recall Wilcox was the person whom the Government admitted that Dr. Feldman did visit in the hospital.

THE COURT: If I am going to refer to any of the testimony, I think I ought to make my reference balanced.

(The Jury took its place in the jury box at 10:10 a.m.)

THE COURT: I have two notes that were handed to the Marshal last night after I had released you for the evening. One reads, "Is there testimony for Wilcox? If so, let's hear it."

Wilcox himself did not testify. There was testimony by one witness, Dee Lynnn Lovel, who said that she was Chief of the Medical Information Section at the Veterans Administration Hospital at Castle Point and that Mr. Wilcox was a patient there. I believe the dates were October 11, 1971 to November 8 of 1971, and that in the records there was no reference to treatment by Dr. Feldman, and that treatments by physicians were normally recorded in hospital records.

Now, when Dr. Feldman testified he said that he visited Mr. Wilcox at the hospital. I think that is a reasonable summary of the evidence relating to Wilcox. But Wilcox himself did not testify.

Now, your other note reads, "Would like to hear Mrs. Scott's testimony and Mr. Roberts' testimony" and the reporter will read those to you.

(Testimony read.)

THE COURT: I think that is what you asked for. You may retire to resume your deliberations.

(The Jury retired at 10:35 a.m. to continue its deliberations.)

THE COURT: I will ask the Clerk to mark these Court's Exhibits 2 and 3.

(Court's Exhibits 2 and 3 marked for identification.)

(At 12:00 noon the following took place.)

THE COURT: As you are aware, we have a note from the Jury indicating that they would like to hear Joseph Perrotta's testimony and that of his daughter, whose name, I believe, is Dolores Vicari. Perrotta's testimony, of course, was taken on videotape, but, there was a stenographic transcript, and I would propose that that be read and I would propose those portions of the Grand Jury testimony that were read.

MR. BATCHELDER: I have them marked. I think Mr. Martin's starts on page four. He did those two, and then we, your Honor, started on page five, just right here, and

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went over to line 13. Possible your Honor would like to read that.

THE COURT: Whichever you prefer.

(Note marked Court's Exhibit 4.)

(Jury in box at 12:05 p.m.)

THE COURT: I have your note, which has been marked Court's Exhibit 4, and which indicates that you would like to hear the testimony of Joseph Perrotta and that of his daughter. Joseph Perrotta, as you may recall, testified by deposition, which was taken on videotape. But there was a court reporter there, who also took it down on a stenotype machine, and that has been transcribed, and the court reporter will read that transcript to you.

You may also recall that following the playing of the videotape portions of Mr. Perrotta's testimony before the Grand Jury were read, first by Mr. Martin, and then other portions by Mr. Batchelder, and the court reporter will read those Grand Jury excerpts also.

(Testimony read.)

THE COURT: You may retire to continue your deliberations.

(Jury retired to continue its deliberations at 12:30 p.m.)

(The Jury was provided with lunch.)

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